

DERIENZO AND WILLIAMS, P.L.L.C.

State Bar #00510200

3681 N. ROBERT ROAD

PRESCOTT VALLEY, AZ 86314

TEL.: (928) 759-5572

FAX: (928) 759-5573

Email: yavapailaw@hotmail.com

Craig Williams

Attorney at Law

2011 MAY -2 PM 3:14

CLERK

Janet L. Harkness

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN DEMOCKER,

Defendant.

) ~~JP~~ **1300CR201001325**

)

)

) **MOTION TO DISMISS FOR**

) **PROSECUTORIAL MISCONDUCT or**

) **MOTION TO DISQUALIFY THE**

) **YAVAPAI COUNTY ATTORNEY'S**

) **OFFICE**

)

)

)

) **(Hon. Warren Darrow, David Mackey)**

The Defendant, by and through undersigned counsel, pursuant to Arizona Rules of the Supreme Court, Rule 42, E.R. 3.8, moves to DISMISS the above-captioned case with prejudice, for prosecutorial misconduct: the state illegally viewed and printed sealed ex parte pleadings using the OnBase system. In the alternative, the Court should Disqualify the Yavapai County Attorney from the above-captioned case. Both options are pursuant to the Defendant's 6th Amendment Right to present a defense and to effective assistance of counsel. See: St. v. Pecard, 196 Ariz. 371 (Div. 1,1999), Washington v. Texas, 388 U.S. 14 (1967), In re Zawada, 208 Ariz. 232 (Ariz.,2004). Arizona Constitution, Art. 2 §24, the 5th, 6th and 14th Amendments to the U.S. Constitution, and the Arizona Constitution, Article 2 §§ 4, 23, and 24: specifically the Defendant's Right to Effective Assistance of Counsel, and his Right to a Fair Trial.

1). FACTS

Ex parte pleadings and hearings have been the subject of an ongoing and heated dispute between the state, Judge Lindberg and the Defense. There have been several vitriolic pleadings filed by the state concerning ex parte pleadings, ex parte hearings, and the funding of the defense lawyers. For instance, the state complained -- a year after the fact -- that Judge Lindberg conducted an ex parte hearing on July 10, 2009, "without prior knowledge of the State." ("State's Motion for Reconsideration of Sanction Imposed July 26, 2010 [Filed July 28, 2010] and Request for Evidentiary Hearing and Motion to Unseal Records of Ex Parte Proceedings," pg. 3, filed September 8, 2010, hereinafter "Motion to Unseal"). The state further complained that Judge Lindberg conducted the ex parte hearing "without proper notice ... *to the victims.*" (*Id.*, italics added).

In that same Motion, the state opined:

At the conclusion of that hearing, it appears that Judge Lindberg ordered that the County pay the fees for defense experts, expert costs, transcription and possibly attorney fees." ¹ It also appears from Public Defender Dean Trebesch's April 16, 2010 email to Julie Ayers that close to \$1,000,000.00 was paid on Defendant's behalf for the period July 10, 2009 through April 16, 2010.

¹The issue of whether or not County funds were paid to the Defense lawyers was rebuked by the Defense: "... on information and belief, Yavapai County Attorney Sheila Polk contacted Dean Trebesch, the Yavapai County Indigent Defense Contract Administrator to inquire about the subject matter of *ex parte* and under seal documents relating to the payment of Mr. DeMocker's defense costs. Although she was properly not provided with this information, she did attend Court proceedings on July 9 but did not enter an appearance. Also, during the course of the trial the State made the unfounded, improper and totally irrelevant suggestion in a public pleading that defense counsel were being paid by Yavapai County taxpayers." (Defense "Objections to the State's Late Disclosed, Irrelevant Hartford Documents and Witnesses," filed July 12, 2010, pg. 3, italics in original).

The "public pleading" referred to in that Defense Motion was the "State's Response to Defendant's Supplemental Request Regarding sanctions Dated June 10, 2010," in which the state stated: "... it is believed that the taxpayers of Yavapai County are paying defense attorneys at this point in time." (See: "State's Response ...," fn #2, pg. 7).

... There are several problems with this situation. The first is that the propriety of an ex parte hearing relating to the defendant's indigency and requests for payments of costs and/or fees is called into question by both State v. Apelt, 176 Ariz. 349, P.2d.634 (1993) and the recent case of Morehart v. Barton,² [now cited as] 225 Ariz. 269, 236 P.3d 1216 (2010). Not to mention the fact that a determination of indigent status is a public matter under Rule 6.4 of the Rules of Criminal Procedure. No explanation has been provided as to why such a matter is appropriately heard ex parte. Additionally, this ex parte hearing appears to have been conducted in violation of E.R. 3.5 of the Rules of Professional Conduct and Rule 2.9 of Canon 2 of the Canons of Judicial Conduct.

If this ex parte hearing is alleged to have been conducted under the authority of Rule 15.9 of the Arizona Rules of Criminal Procedure, then the appropriate steps were not followed as specifically outlined in the Rule. In subsection (b), it provided that there will not be any ex parte proceeding "unless a proper showing is made concerning the need for confidentiality." As demonstrated in the Morehart decision, that "proper showing" is not done ex parte, but rather with the State and victims having input. This important step in the process was skipped entirely, resulting in the violation of Rule 15.9, which necessarily means E.R. 3.5 and Canon 2 were violated by counsel and Court, respectively.

This situation must be remedied without further delay. The bottom line is that all proceedings in this matter that have proceeded ex parte must be unsealed by this Court. Because the records of July 10, 2009 ex parte proceeding in particular will likely shed further light on the situation regarding the financial sanction in this case and this hearing was improperly conducted without the State being present, the State moves that this hearing in particular, and all other unknown ex parte proceedings in general, be unsealed.

(*Id.*, pgs. 3-4, italics added).

The state had previously filed a "State's Memorandum Re Ex Parte Communications," nearly two weeks earlier³, on July 15, 2010. In it, the state opined:

"The State objects to any ex parte communication between Defendant, his counsel, and this Court relating to defense counsel's continued representation in

²**This case has been vacated and remanded by the Arizona Supreme Court, on April 29, 2011.** "Because the defendant has no right to attend such a purely procedural hearing, victims also have no right to attend." Morehart v. Barton, --- P.3d ----, 2011 WL 1599648 (Ariz.,2011).

³However, the motions were not filed by the same attorney.

light of the insurance issues. Defendant seeks future permission to communicate with this Court in an ex parte manner regarding this issue. It simply cannot be done." (Pg. 1).

It is clear from the state's pleadings that it was very frustrated and upset over several issues presented in the ex parte process and the funding for the defense lawyers. It is also clear from the pleadings that the state had been actively investigating the existence of ex parte motions/hearings. Phrases like "upon information and belief," "it appears," and "appears to have been" were used in the state's pleadings as predicates for factual bombshells made by the state in those pleadings, which included, but were not limited to, the following:

- 1) That Judge Lindberg ordered the County pay the fees for defense experts, expert costs, transcription *and possibly attorney fees* (see: fn #1, pg. 2, *supra*).
- 2) That the state sought out and had a copy of "Public Defender Dean Trebesch's April 16, 2010 email to Julie Ayers which allegedly stated that close to \$1,000,000.00 was paid on Defendant's behalf for the period July 10, 2009 through April 16, 2010."
- 3) That the Defense violated Rule 6.4, of the Arizona Rules of Criminal Procedure, E.R. 3.5 of the Rules of Professional Conduct, and Rule 2.9 of Canon 2 of the Canons of Judicial Conduct by having an ex parte hearing to determine indigency.

(Motion to Unseal, *supra*).

On the latter issue, the state cemented its knowledge of the proceeding by stating: "No explanation has been provided as to why such a matter is appropriately heard ex parte." (*Id.*, see also: pgs. 3, *supra*).

But, *how did the state know about the ex parte proceedings?*

Before we answer that question, it is interesting to note that the state cited both State v. Apelt, 176 Ariz. 349, P.2d.634 (1993), and Morehart v. Barton, 225 Ariz. 269, 236 P.3d 1216

(Div 1., 2010), for the propositions that ex parte motions/hearings "simply cannot be done," *supra*, that ex parte motions/hearings violate *victims rights*, and that at least one ex parte hearings violated Rule 6.4, of the Arizona Rules of Criminal Procedure, E.R. 3.5 of the Rules of Professional Conduct, and Rule 2.9 of Canon 2 of the Canons of Judicial Conduct.

On July 6, 2009, the Defendant filed his "Defendant's Motion to File Rule 15.9 Applications *Ex Parte*, *In Camera*, and Under Seal, and for an *Ex Parte*, *In Camera*, Under Seal Hearing." ("15.9 Motion"). In that Motion, the Defendant wrote:

"Therefore, Mr. DeMocker, by and through counsel, hereby requests that this Court permit the filing of Rule 15.9 **applications** *ex parte*, *in camera*, and under seal and that the Court hold an *ex parte*, *in camera*, and under seal hearings to rule on counsel's initial Rule 15.9 **applications** on or before July 21, 2009." (Bold added).

This is an important Motion for two reasons: 1) the Motion was copied to Joe Butner, lead counsel for the state; and 2) it referred to *applications*, in the plural -- thus giving notice there would be many such applications.

Thus, the state had enough knowledge of the ex parte process in this case to make the factual allegations and legal assertions contained in its Motion to Unseal, to wit: that "as demonstrated in the Morehart decision, that 'proper showing' is not done ex parte, but rather with the State and victims having input. This important step in the process was skipped entirely, resulting in the violation of Rule 15.9, which necessarily means E.R. 3.5 and Canon 2 were violated by counsel and Court, respectively." (Motion to Unseal, *supra*). The state had enough knowledge of the ex parte process in this case to make these demands: "This situation must be remedied without further delay. The bottom line is that all proceedings in this matter that have

proceeded ex parte must be unsealed by this Court⁴." (*Id.*).

This was not done to the state's satisfaction. Thus, since the state had cried foul because Judge Lindberg conducted the ex parte hearing "without proper notice *to the victims*," the proper avenue for the state was to file a special action, as the Maricopa County Attorney did in Morehart v. Barton:

Defendant filed a motion for an ex parte hearing, asserting that because the "issue has to do with the defense investigation into mitigation matters ... the State has no standing to be present during the hearing." Petitioners objected on the grounds that (1) under the Victims' Bill of Rights, any ex parte hearing that excludes a victim is unconstitutional; and (2) a victim has a constitutional and statutory right to attend any criminal proceeding at which a defendant has the right to be present. Following the presentation of oral argument at the "final trial management conference," the court granted the motion and scheduled an "ex parte hearing re return of summons."

Petitioners then filed this petition for special action. After briefing, we accepted jurisdiction and issued an order vacating the trial court's decision granting Defendant's request for an ex parte hearing. We stated that a written decision would follow, which we provide here.

(*Id.*, 225 Ariz. 269, 270, 236 P.3d 1216, 1217 (Ariz.App. Div. 1,2010)).

But the state chose not to file a special action.

That leads us back to the question of *how* the state knew about the ex parte pleading and proceedings. The answer to that question is multi-faceted. First there was Judge Lindberg's July 6, 2009 Minute Entry Order which stated:

⁴ This is not a true statement of the law. In fact, when the Supreme Court remanded Morehart v. Barton, the Supreme Court repeated the quote from State v. Bible, "noting that victims' rights cannot conflict with right to a fair trial." (Bible, 175 Ariz. 549, 602-03, 858 P.2d 1152, 1205-06 (1993).) The Morehart Court also held that Rule 15.9 overruled Apelt, *supra*, "that opinion's comments about the legal authority for ex parte proceedings have been superseded by Rule 15.9(b), which authorizes ex parte communications related to court-appointed investigators and experts for indigent capital defendants when there is a need for confidentiality."

The Court this date having received Defendant's July 6, 2009 Motion to File Rule 15.9 Applications *Ex Parte*, *In Camera*, and Under Seal and for an Expedited *Ex Parte*, *In Camera*, Under Seal Hearing,

IT IS HEREBY ORDERED directing the Clerk of Court to forthwith seal Motion to File Rule 15.9 Applications *Ex Parte*, *In Camera*, and Under Seal and for an Expedited *Ex Parte*, *In Camera*, Under Seal Hearing.

Judge Lindberg's July 6, 2009 Minute Entry Order was copied to "Joseph C. Butner III," the lead attorney for the state at the time. Judge Lindberg's July 6 MEO was also copied to "Victim Services: Att. Marie Martinez." Thus, actual notice had been given to the state.

There can be no doubt that, as of July 9, 2009, that the state absolutely knew about the Defense's "Rule 15.9 Applications Ex Parte, In Camera, and Under Seal and for an Expedited Ex Parte, In Camera, Under Seal Hearing." (*Supra*).

On December 3, 2010, the state confirmed this in its "State's Motion for Change of Judge" (hereinafter "10.1 Motion"). In its 10.1 Motion, the state wrote:

On July 6, 2009, Defendant filed a "Motion to File Rule 15.9 Applications Ex Parte, in Camera, and Under Seal and for an Expedited Ex Parte, in Camera, Under Seal Hearing." Defendant requested that a hearing be held on or before July 21, 2009. (Exhibit B) *The Motion was provided to the State and sealed by Judge Lindberg on July 6, 2009, the same date it was filed.* (Exhibit C) Without prior notice to the State or the Victims, on July 10, 2009 an ex parte hearing was held with Defendant and defense counsel John Sears and Larry Hammond. (Exhibit D). *The State received a copy of this minute entry after the hearing was held.*

(10.1 Motion, page 2, italics added).

The state then complained that it was not given notice of subsequent events:

Neither the State *nor the Victims* were informed of or copied on any subsequent Rule 15.9 applications/motions and received a copy of only one subsequent order dated July 23, 2009.

(*Id.*, italics added).

Again the state cried foul over the lack of notice "to the victims," and again the state cited

Morehart v. Barton:

The Arizona Constitution authorizes the victims' presence at Rule 15.9 hearings *even if* a defendant has established a legitimate need for confidentiality.

Morehart v. Barton, 225 Ariz. 269, 236 P.3d 1216 (2010), *was a special action* in a first degree murder case where the State filed a notice of intent to seek the death penalty. The petitioners were family members of individuals whom defendant allegedly murdered and victims under Art. 2, Sec. 2.1(C) Ariz. Const, and A.R.S. § 13-4401(19). *The petitioners filed a special action* challenging the trial court's decision to allow the defendant an ex parte hearing concerning mitigation.

(10.1 Motion, pg. 3-4, bold in original, italics added).

Still, the state did not file a special action.

But how did the state know about any other ex parte proceedings? The state said:

On November 24, 2010, the State first learned of numerous ex parte motions and orders which were filed under seal and which remain under seal. *From the information gleaned from the notations on the outside of the sealed envelopes*, it appears that between the period July 10, 2009 through March 23, 2010, no fewer than 29 ex parte motions and orders were filed by Defendant and/or issued by the Court. (Exhibit F) These ex parte proceedings appear to be in violation of the Rules of Criminal Procedure, the Arizona Constitution and the Canons of Judicial Conduct.

(*Id.*, pg. 2, italics added).

In its 10.1 Motion, that state included this misleading statement:

The State was only notified one time that Defendant requested appointment of an expert pursuant to Rule 15.9. *Upon closer examination* of that one request, it appears that Judge Lindberg may have issued a "blanket" finding that every request under the guise of 15.9 was to be decided *ex parte*."

(*Id.*, pg. 5, italics added).

The 10.1 Motion contained an Affidavit from Deputy County Attorney Jeff Paupore, which stated in the applicable part:

2. On November 24, 2010, with permission from the court, your affiant reviewed court files numbered 3 and 4 and an accompanying expando

- containing approximately 29 sealed manila envelopes.
3. In numerous locations in the court files, the Clerk, at the direction of Judge Lindberg, inserted pages titled PURGED on Rule 15.9 proceedings with instructions that no one could review the subject pleading without a prior order from the court.
 4. Your affiant reviewed the State's files and could not locate any of the purged and sealed Rule 15.9 pleadings except as noted on Exhibits B through F attached.
 5. *Your affiant reviewed the "OnBase" records* and could not locate any of the sealed Rule 15.9 applications or orders.
 6. Upon information and belief, your affiant believes Defendant and Judge Lindberg failed to notify the State and the victims of these ex parte proceedings.
 7. Until the State sought and gained the Court's permission to review the Court's sealed files, *the State had no knowledge or notice that Defendant and/or his attorneys met with Judge Lindberg ex parte on numerous occasions.*

Note the language choice in the 10.1 Motion, "from the information gleaned," "it appears," and "upon closer examination." These are important word choices, because they are not truthful. Note the language in the Attorney Paupore's Affidavit: "Upon information and belief," and "the State had no knowledge or notice that Defendant and/or his attorneys met with Judge Lindberg ex parte on numerous occasions." These are not accurate statements.

Perhaps Mr. Paupore -- alone -- did not know "that Defendant and/or his attorneys met with Judge Lindberg ex parte on numerous occasions," but many, many other members of the Yavapai County Attorney's Office -- and their agents -- absolutely did.

No, the Yavapai County Attorney did NOT first learn -- on November 24, 2010 -- of numerous ex parte motions and orders which were filed under seal and which remain under seal from the information gleaned from the notations on the outside of the sealed envelopes. The Yavapai County Attorney was NOT in the dark, only learning "upon closer examination of that one request, it appears that Judge Lindberg may have issued a 'blanket' finding that every request under the guise of 15.9 was to be decided ex parte." Those statements are absolute nonsense.

The state knew -- for a very long time -- about the numerous ex parte motions and orders

which were filed under seal and which remain under seal.

It was recently revealed *how* the state knew about the ex parte pleadings and proceedings. Two Reports that were generated by the Yavapai County Clerk's Office regarding sealed and/or ex parte pleadings in this case⁵ that were provided to undersigned counsel, via Judge Mackey's March 16, 2011 "Ruling" finally revealed the truth. Before the Clerk's Reports were issued, the Defense had no knowledge that the state had done the unthinkable:

The state illegally viewed and printed ex parte pleadings using the OnBase system!

And not just a little. Not by accident. Not inadvertently. No, the state intentionally viewed and printed ex parte pleadings using the OnBase. Here is the awful truth about the state illegally accessing Court-Ordered-Sealed ex parte documents:

The Ex Parte documents were viewed and printed by the Yavapai County Attorney's Office, Yavapai County Victim Services a total of 60 times!

But that is not the end of the state's outrageous behavior. In addition, the "Sealed Documents" were viewed and printed by the Yavapai County Attorney's Office, Yavapai County Victim Services and the Yavapai County Sheriff's Department a total of 104 times.

Not just a little. Not by accident. Not inadvertently. No, the state intentionally viewed and printed ex parte and sealed pleadings using the OnBase system, because it was obsessed with the subject matter and was conducting a full-bore, illegal investigation.

This was not a one-time curious *peek* at forbidden fruit, it was systematic. This was not a single "rogue employee" going behind the poor bosses' back for a sneak peek at the taboo -- it was *an illegal investigation*.

It must be noted, for the purposes of this case, that the OnBase system is only available to

⁵The documents were filed under V1300CR20081339, but are absolutely relevant in V1300CR201001325. V1300CR20081339 and V1300CR201001325 are virtually the same case.

the Yavapai County Attorney, and Yavapai County Public Defender. Private counsel have no such access. Yes, the defense can go to the *public* OnBase terminal in the Clerk's Office. However, because that environment is not confidential, and all searches done on any computer can be re-created, that OnBase system really is not an ethical option for the Defense. In addition, throughout the pendency of the state's invasion of the *sealed ex parte documents* -- well over 14 months! -- there were numerous employees of the County Attorney accessing OnBase, in the privacy of their offices. This methodology is not available to the defense. In fact, when the Defense asked for access to a private OnBase terminal at the Clerk's Office, that Request was denied by Judge Mackey.

One such Yavapai County Attorney employee was Jack Fields, an attorney who had filed pleadings in this case⁶! One of Deputy County Attorney Fields' Pleadings was filed on October 14, 2010, and was entitled:

Motion for *in Camera* Review of Records Demanded Pursuant to a Public Records Request under A.R.S. §39-121 and for Order Authorizing or Enjoining the Release of Said Records.

This "Fields' Pleading," which was copied to Dateline NBC, ABC News, KYCA Radio

⁶The "Fields Pleading" was filed under V1300CR20081339, and referenced the "E-mail Case," V1300CR201080461. ALL of the same counts are contained in the instant case. There are at least two other pleadings filed by Mr. Fields:

On January 3, 2011, attorney Jack Fields filed a "Motion to Strike Pleading," in which he stated "To allow Mr. Williams standing to move the court to sanction an attorney participating in a criminal case would allow anyone to become a party in a criminal case, to file motions challenging the actions of the court and the attorneys. The result would be absolute chaos in the criminal justice system. It should not be allowed." (Jack Fields signed the Motion and sent copies to NBC News, 20/20, KYCA Radio, and the Prescott Daily Courier)

On January 3, 2011, attorney Jack Fields filed a Motion to Strike "Complaint." In this Motion, Mr. Fields notes William E. Williams' Complaint for Conspiracy to Withhold Documents." Mr. Fields states "Since the 'complaint' has no meaning or purposes, it is frivolous and should be stricken as such."

News, and The Daily Courier, discussed facts pertinent to the instant case:

The new charges were based on allegations that DeMocker caused an e-mail to be created that blamed others for the death of Carol Kennedy. Evidence gathered leading to the new charges include the audio transcript of a September 19, 2010 interview with Renee Girard (Democker's former girlfriend) and the audio interview with DeMocker on July 21, 2009.

(Fields' Pleading, pg. 3).

The "Fields' Pleading" opined about the release of the new Girard and DeMocker recordings:

YCAO believes the audio and transcript of the September 19, 2010 Renee Girard interview and the audio of the July 21, 2009 DeMocker interview are public records, and public disclosure of material redacted of private information is appropriate because *it will not seriously impinge upon the rights of the defendant* or the victims in this case, and will not be seriously detrimental to the State's interest ... redacted material would be limited to personal identifying information.

(Fields' Pleading, pgs. 3-4, italics added).

This Court should look at the state's language in the Fields' Pleading, "it will not seriously impinge upon the rights of the defendant," and "it will not be seriously detrimental to the State's interest" in a dubious light. The cynicism in these statements is positively offensive. Only someone who is doing the impinging can make statements like these. The release of a recording of the Defendant to the press absolutely would not be detrimental to the state's case, it would help it. But, there are always serious considerations not mentioned by the state -- voluntariness, Miranda, and the Arizona Rules of Evidence which must be considered before such a statement can be used. The only purpose of such a release would be to rescue the state's flimsy case, and to taint the jury pool. It also demonstrates a lack of respect for the U.S. Constitution.

The Fields' Pleading should be heavily considered by this Court, because according to the Clerk's Office Report, Attorney Jack Fields viewed sealed ex parte documents 14 times, *over a*

one year period, from September 2, 2009 to September 17, 2010.

The "Fields Pleading" was filed *after* Attorney Jack Fields viewed the sealed ex parte documents.

Attorney Fields is an employee of the Yavapai County Attorney, and an agent of that agency. ARS §38-462(A), "Powers and duties of deputies," states:

Unless otherwise provided, each deputy of a state or county officer possesses the powers and may perform the duties prescribed by law for the office of the principal.

Thus, the Yavapai County Attorney is responsible for (or *directed*) Attorney Fields' actions. Mr. Fields was spying on sealed ex parte documents. There is NO explanation why an attorney like Mr. Fields would be viewing sealed ex parte documents -- 14 times. Mr. Fields is in the *civil division* of the Yavapai County Attorney's Office -- and not assigned to nor prosecuting the instant *criminal* case. Ethical and legal issues aside, viewing sealed ex parte documents is dishonest. Worse still, Mr. Fields has represented the Yavapai County Sheriff in the numerous disputes over the housing of the Defendant. It is reasonable to assume that information from the sealed ex parte documents was being shared with the Sheriff's Office. This did not happen in a vacuum, as evidenced by the sheer volume of Yavapai County Attorney employees involved.

Here is a list of the ex parte documents viewed by Mr. Fields:

***Ex Parte* documents viewed by Jack Fields - (Civil division - Arizona State Bar #012470):**

1. 09/02/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed
2. 10/02/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
3. 10/28/09 - Notice of Filing Statement (filed ex parte) - Viewed
4. 11/12/09 - Application Revised Application for Rule 15.9 (filed ex parte) - Viewed
5. 12/09/09 - Order Denying (filed ex parte) - Viewed
6. 12/11/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
7. 12/17/09 - Motion for Reconsideration re Rule 15.9 (filed ex parte) - Viewed
8. 01/11/10 - Motion (filed ex parte) - Viewed
9. 01/11/10 - Motion for Rule 15.9 (filed ex parte) - Viewed

10. 04/28/10 - Order for Rule 15.9 (filed ex parte) - Viewed
11. 05/13/10 - Sealed Minute Entry re Ex Parte in chambers - Viewed
12. 06/23/10 - Reply to Supplemental Request re Sanctions - Viewed
13. 07/08/10 - Request for Conference with Court (filed ex parte) - Viewed
14. 09/17/10 - Notice of Filing Transcript (filed ex parte) - Viewed

The Yavapai County Sheriff is the police agency involved in prosecuting the Defendant.

The fact that their attorney, Mr. Fields -- who has commented in Court against changing the Defendant's release conditions -- has been spying on the Court-Ordered sealed ex parte documents is a gross Constitutional violation, a violation of a Court Order, possibly an ethics violation, and in general, a debacle of the first order.

What were they thinking?

In addition, the ex parte documents are not the only documents that Mr. Fields spied on. He viewed sealed documents as well. There is NO explanation why a *civil division* attorney like Mr. Fields, who is not assigned to nor prosecuting the instant criminal case, would be viewing sealed documents. Mr. Fields was not part of the "sealing process," which involved a Court Order. Mr. Butner and Mr. Paupore were part of that process. Considering the *25 sealed documents viewed* by Mr. Fields, and the fact that Mr. Fields represents the Sheriff -- an agency with no right to view sealed documents -- using the state's phrase-ology, *it appears* that Mr. Fields was part of an improper and possibly unethical investigation. It is reasonable to assume that this information was improperly being shared with the Sheriff's Office. Here are the sealed document viewed by **Jack Fields - (Civil division - Arizona State Bar #012470):**

1. 09/02/09 - Order for Rule 15.9 Appointment - Viewed
2. 04/28/10 - Order for Rule 15.9 Appointment - Viewed
3. 05/04/10 - Jury Message - Viewed
4. 05/05/10 - Jury Message - Viewed
5. 05/06/10 - Jury Message - Viewed
6. 05/06/10 - Jury Message - Viewed
7. 05/11/10 - Jury Message - Viewed

8. 06/02/10 - Jury Message - Viewed
9. 06/08/10 - Jury Message - Viewed
10. 06/17/10 - Jury Message - Viewed
11. 06/30/10 - Jury Message - Viewed
12. 07/07/10 - Jury Message - Viewed
13. 07/08/10 - Supplement to State's Motion to Extend Time - Viewed
14. 07/12/10 - Motion to Determine Counsel - Viewed
15. 07/12/10 - Objection to State's Late Disclosure - Viewed
16. 08/05/10 - Order Sealing Document - Viewed
17. 08/20/10 - Order Under Advisement Ruling - Viewed
18. 08/20/10 - Order Under Advisement Ruling - Viewed
19. 08/20/10 - Order Under Advisement Ruling - Viewed
20. 08/20/10 - Order Under Advisement Ruling - Viewed
21. 08/30/10 - Order Granting (Request to Unseal documents) - Viewed
22. 09/16/10 - Court Order/Ruling - Viewed
23. 09/22/10 - Motion and Order to seal - Viewed
24. 09/22/10 - Order Sealing document - Viewed
25. 09/28/10 - Order Under Advisement Ruling - Viewed

As mentioned above, many other Yavapai County Attorney employees were involved in this clandestine and illegal investigative operation. Below is a partial list of the County Attorney employees or agents involved. *A complete list* is attached to this Motion with the documents.

Barb Paris - (Prescott Misdemeanor division)

***Ex Parte* documents viewed:**

1. 08/31/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
2. 09/02/09 - Order for Rule 15.9 Appointment (filed ex parte) - Viewed
3. 12/23/09 - Order: Denying Motion for Reconsideration (filed ex parte) - Viewed
4. 01/14/10 - Order Appointing Rule 15.9 (Application filed ex parte) - Viewed
5. 01/14/10 - Order Appointing Rule 15.9 (Motion filed ex parte) - Viewed
6. 01/14/10 - Order Appointing Rule 15.9 - Viewed
7. 03/26/10 - Order Appointing Rule 15.9 (Motion filed ex parte) - Viewed
8. 04/28/10 - Order for Rule 15.9 Appointment (Motion filed ex parte) - Viewed

Barbara Genego - (Prescott division)

***Ex Parte* documents viewed and printed:**

1. 03/26/10 - Order Appointing (Motion filed ex parte) - Printed
2. 04/28/10 - Order for Rule 15.9 (Motion filed ex parte) - Printed

Deb Cowell - (Prescott/Trial division)

Ex Parte documents viewed and printed:

1. 10/02/09 - Motion for Rule 15.9 (filed ex parte) - Viewed and Printed
2. 11/12/09 - Application: Revised Application for 15.9 (filed ex parte) - Viewed
3. 12/11/09 - Motion for Rule 15.9 (filed ex parte) - Viewed and Printed

Kathy Durrer - (Prescott/Trial division)

Ex Parte documents viewed:

1. 09/02/09 - Order Rule 15.9 Appointment - Viewed

Marie Higgins - (Victim Services/Charging division)

Ex Parte documents viewed:

1. 10/02/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
2. 11/12/09 - Revised Application re Rule 15.9 Appointment (filed ex parte) - Viewed

Pam Spear - (Verde division)

Ex Parte documents viewed:

1. 02/19/10 - Order for Rule 15.9 (filed ex parte) - Printed
2. 06/23/10 - Reply to Supplemental Request re Sanctions (filed ex parte) - Viewed

Paula Glover - (Prescott Misdemeanor division)

Sealed⁷ documents viewed and printed:

1. 10/31/08 - Grand Jury Minutes - Viewed
2. 11/04/08 - Transcript of Grand Jury Proceedings - Viewed
3. 08/03/09 - Order re Rule 15.9 - Viewed
4. 08/21/09 - Order Amending Rule 15.9 - Viewed and Printed
5. 09/02/09 - Order for Rule 15.9 Appointment - Viewed and Printed
6. 11/16/09 - Order for Rule 15.9 Appointment - Viewed
7. 12/17/09 - Order for Rule 15.9 Appointment - Viewed
8. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
9. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
10. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
11. 03/26/10 - Order Appointing - Viewed

⁷The "sealed documents" search is included here rather than below as being illustrative of the illegal investigation which was taking place. There is no other explanation for a secretary who is not assigned to the case viewing *and printing* sealed documents.

12. 04/21/10 - Order for Rule 15.9 - Viewed
13. 04/28/10 - Order for Rule 15.9 - Viewed
14. 09/22/10 - Order Sealing Document - Viewed

***Ex Parte* documents viewed and printed:**

1. 08/03/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed
2. 08/11/09 - Order Granting Ex Parte (Motion filed ex parte) - Viewed
3. 08/21/09 - Order Amending 15.9 Appointment (filed ex parte) - Viewed and Printed
4. 09/02/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed and Printed
5. 11/16/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed
6. 12/17/09 - Order Appointing Rule 15.9 (Motion filed ex parte) - Viewed
7. 01/14/10 - Order Appointing Rule 15.9 (filed ex parte) - Viewed
8. 01/14/10 - Order Appointing Rule 15.9 (filed ex parte) - Viewed
9. 03/26/10 - Order Appointing (Motion filed ex parte) - Viewed
10. 04/21/10 - Order for Rule 15.9 (filed ex parte) - Viewed
11. 04/28/10 - Order for Rule 15.9 (filed ex parte) - Viewed

Rhonda Grubb - (Prescott Misdemeanor division)

Sealed documents viewed and printed:

1. 07/12/10 - Objection to State's late disclosure - Viewed and Printed
2. 09/22/10 - Order Sealing Document - Viewed

Seretha Hopper - (Prescott division)

Sealed⁸ documents viewed and printed:

1. 08/03/09 - Order for Rule 15.9 - Printed
2. 08/19/09 - Order for Rule 15.9 - Printed
3. 08/21/09 - Order for Rule 15.9 - Printed
4. 09/02/09 - Order for Rule 15.9 Appointment - Printed
5. 12/17/09 - Order Appointing Rule 15.9 - Viewed
6. 01/14/10 - Order for Rule 15.9 - Printed
7. 01/14/10 - Order for Rule 15.9 - Printed
8. 01/14/10 - Order for Rule 15.9 - Printed
9. 02/19/10 - Order for Rule 15.9 - Printed
10. 04/21/10 - Order for Rule 15.9 - Printed
11. 08/05/10 - Order Sealing Document - Viewed
12. 09/16/10 - Court Order/Ruling - Printed

⁸The "sealed documents" search is included here rather than below) as being illustrative of the illegal investigation which was taking place. There is no other explanation for a secretary who is not assigned to the case viewing *and printing* sealed documents.

13. 09/22/10 - Order sealing document - Printed

***Ex Parte* documents viewed and printed:**

1. 08/03/09 - Order for Rule 15.9 (filed ex parte) - Viewed
2. 08/11/09 - Order Granting Ex Parte (filed ex parte) - Printed
3. 08/19/09 - Order for Rule 15.9 (application filed ex parte) - Printed
4. 08/21/09 - Amending 15.9 Appointment (application filed ex parte) - Printed
5. 09/02/09 - Order for Rule 15.9 (filed ex parte) - Printed
6. 12/17/09 - Order Appointing Rule 15.9 (filed ex parte) - Viewed
7. 01/14/10 - Order for Rule 15.9 (application filed ex parte) - Printed
8. 01/14/10 - Order for Rule 15.9 (application filed ex parte) - Printed
9. 01/14/10 - Order for Rule 15.9 (application filed ex parte) - Printed
10. 02/19/10 - Order for Rule 15.9 (application filed ex parte) - Printed
11. 04/21/10 - Order for Rule 15.9 (application filed ex parte) - Printed

Tony Camacho - (Victim Services Prescott division)

Sealed⁹ documents viewed:

1. 08/03/09 - Order for Rule 15.9 - Viewed
2. 08/21/09 - Order Amending Rule 15.9 - Viewed
3. 09/02/09 - Order for Rule 15.9 Appointment - Viewed
4. 02/19/10 - Order for Rule 15.9 - Viewed
5. 03/10/10 - Motion to Exclude/Preclude evidence - Viewed
6. 04/28/10 - Order for Rule 15.9 - Viewed
7. 05/04/10 - Jury Message - Viewed
8. 05/05/10 - Jury Message - Viewed
9. 05/06/10 - Jury Message - Viewed
10. 05/06/10 - Jury Message - Viewed
11. 05/11/10 - Jury Message - Viewed
12. 08/02/10 - Motion: Protective Order - Viewed
13. 08/20/10 - Under Advisement Ruling - Viewed
14. 08/20/10 - Under Advisement Ruling - Viewed
15. 08/20/10 - Under Advisement Ruling - Viewed
16. 08/20/10 - Under Advisement Ruling - Viewed
17. 08/30/10 - Order Granting - Viewed
18. 09/16/10 - Court Order/Ruling - Viewed

***Ex Parte* documents viewed:**

1. 07/21/09 - Motion for 15.9 (filed ex parte) - Viewed

⁹The "sealed documents" search is included here rather than below) as being illustrative of the illegal investigation which was taking place. There is no other explanation for a "victim witness" agent, who is not assigned to the case viewing sealed documents.

2. 08/03/09 - Order for Rule 15.9 - Viewed
3. 08/21/09 - Amending 15.9 Appointment (application filed ex parte) - Viewed
4. 09/02/09 - Order for Rule 15.9 (filed ex parte) - Viewed
5. 02/19/10 - Order for Rule 15.9 (application filed ex parte) - Viewed
6. 04/28/10 - Order for Rule 15.9 (filed ex parte) - Viewed

Det. Steven Page - (Yavapai County Sheriffs Office)

Sealed documents viewed:

1. 08/03/09 - Order for Rule 15.9 - Viewed

Det. John McDormont - (Yavapai County Sheriffs Office)

Sealed documents viewed:

1. 07/12/10 - Objection to State's Late Disclosure - Viewed

The last two people listed here are YCSO law enforcement. Det. John McDormont at one point was the case agent. They are both witnesses for the state. Why are they viewing sealed documents? Absent a Court Order, the police have no right to view sealed documents. Without a Court Order, the police viewing the sealed documents is a violation of the Order to seal. To put this into perspective, the police know that once a search warrant is issued, it is a valid court order.

A search warrant is presumed valid and the defendant has the burden of proving its invalidity.

(Mehrens v. State, 138 Ariz. 458, 460-461, 675 P.2d 718, 720 - 721 (Ariz.App.,1983).

In addition, guidance as to how serious the unlawful disclosure of sealed documents / proceedings can be found in § 13-2812(A), "Unlawful grand jury disclosure," which states:

A. A person commits unlawful grand jury disclosure if the person knowingly discloses to another the nature or substance of any grand jury testimony or any decision, result or other matter attending a grand jury proceeding, except in the proper discharge of official duties, at the discretion of the prosecutor to inform a victim of the status of the case or when permitted by the court in furtherance of justice.

B. Unlawful grand jury disclosure is a class 1 misdemeanor.

Here, the Court Orders which sealed the "sealed documents" and the ex parte document was valid, until the state proved the Orders invalid. Which never happened.

An important reason that this case must be dismissed with prejudice is that this Court must impress on the Yavapai County Attorney that a Court Order **must be obeyed!**

The County Attorney must be responsible for this intrusion into the sealed records by the police, under Carpenter v. Superior Court¹⁰, 176 Ariz. 486, 490 (Ariz.App. Div. 1,1993), and Kyles v. Whitney, 514 U.S. 419 (1995).¹¹

In its 10.1 Motion, the state wrote:

The State is mindful of its obligation to avoid interfering with Defendant's Sixth Amendment right to counsel of choice. The State believes, however, that the following could be accomplished without any such interference:

1. All of Defendant's motions/applications/requests pursuant to Rule 15.9 be

¹⁰ "We agree that a law enforcement agency investigating a criminal action operates as an arm of the prosecutor for purposes of obtaining information that falls within the required disclosure provisions of Rule 15.1."

¹¹"But the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of "reasonable probability" is reached. This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith, see Brady, 373 U.S., at 87, the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable. Kyles v. Whitley, 514 U.S. 419, 437-438 (1995).

"We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused, ... and that the duty encompasses impeachment evidence as well as exculpatory evidence. (Citation omitted). Moreover, the rule encompasses evidence "known only to police investigators and not to the prosecutor."
Strickler v. Greene, 527 U.S. 263 (1999)

- unsealed for the reviewing Court;
2. Transcripts of the ex parte proceedings relating to each request be transcribed and be made available to the reviewing Court;
3. The reviewing Court redact all matters which are confidential as provided for in Rule 15.9 or otherwise (i.e., attorney-client confidences) prior to the distribution of same to the State and the Victims; and
4. A finding be made by the reviewing Court whether Judge Lindberg and the defense attorneys had improper ex parte contact warranting a change of judge from Judge Lindberg for cause.

These statements by the state are not truthful. First, the state has *never* been "mindful of the Defendant's 6th Amendment Rights" -- it had already conducted an illegal investigation of the sealed ex parte documents *before* the 10.1 Motion was filed. The state's actions are antithetical to being "mindful of the Defendant's 6th Amendment Rights." Further, the four requests (*supra*) made at the end of the 10.1 Motion were merely camouflage for the fact that the state had already conducted an illegal investigation *before* the 10.1 Motion was filed. The state and already knew of the sealed ex parte documents. It just could not special action without admitting its wrongdoing. The Court of Appeals surely would have pierced the veil and discovered the state's peccadilloes.

For instance, an important document viewed *and printed* by the state was the Defendant's April 23, 2010 "Defendant's Motion for Rule 15.9 appointment of Darko Babic" (Hereinafter "Babic 15.9 Motion"). The following Yavapai County employees viewed and/or printed the Babic 15.9 Motion:

1. Jack Fields - (Civil division - Arizona State Bar #012470)
2. Barb Paris - (Prescott Misdemeanor division)
3. Barbara Genego - (Prescott division)
4. Paula Glover - (Prescott Misdemeanor division)
5. Tony Camacho - (Victim Services Prescott division)

The reason it was so important that the Yavapai County Attorneys were caught spying on this Babic 15.9 Motion, is that Mr. Babic was not going to be a witness for the Defense. Mr. Babic had been consulted by the Defense to "review and analyze the golf club materials and failure that has been alleged to be the murder weapon." (Babic 15.9 Motion, pg. 2). The Defense then decided not to call Mr. Babic as a witness.

The last ex parte document viewed by Mr. Fields was the September 17, 2010 "Notice Filing Transcript," which stated "EX PARTE, UNDER SEAL" on the face sheet. It had a transcript attached, which, at the top of the page, was clearly titled:

"7/10/2009 Hearing - Ex Parte - UNDER SEAL"

That 7/10/2009 Ex Parte Hearing Transcript included a lot of details, which were never meant to be seen by the state. The Court had made specific Orders sealing the matter. Topics of discussion during that 7/10/2009 Ex Parte Hearing included the Defendant's indigency status (the Defendant's financial data was discussed in detail), the status of the real estate holdings, the Defendant's and/or his daughters' interest in the Kennedy estate (*the state's spying on this probably had a lot to do with a charge in the new Indictment!*), divorce attorney costs, tax refund status, the Defendant's debts to his family, debt from lines of credit and credit cards, a complete discussion of the proposed experts, paralegals and investigators (some of which had not been disclosed), and the Defendant's parent's financial involvement. The state was bound by the Court Order sealing this material, and should not have read this document.

The state viewing and printing any of the Defense's 15.9 Motions were blatant invasions of the Defense investigation process and an invasions of possible Defense strategies. The Defense can never adequately demonstrate the depth of the prejudice which happened as a result of the state's clandestine and illegal invasion. This much is clear: the state had an illegal window

with which to be able to preview the Defendant's strategies and investigations. The extent to which the state reacted to the sealed Defense information, illegally obtained from the state's viewing and printing sealed ex parte documents, will never be known. The Court has enough tangible evidence to presume prejudice, because there is an ample written record that the state viewed and printed sealed ex parte documents.

2). LAW AND ARGUMENT

First, it must be stated that the Defense ex parte filings clearly denoted "*EX PARTE, IN CAMERA, UNDER SEAL*" on the face of the pleading. (Emphasis in the originals, attached). The Orders issued by the Court to seal the documents, pursuant to Rule 15.9 requests, clearly stated (**UNDER SEAL**) on the face of the Order. Once anyone for the Yavapai County Attorney's Office saw this denotation -- even by accident -- they had a duty to report that they had seen it. Any viewer of a sealed and/or sealed ex parte document had a duty to NOT READ THE DOCUMENT!

In the two Reports generated by the Yavapai County Clerk's Office regarding sealed and/or ex parte pleadings in this case, provided to undersigned counsel, via Judge Mackey's March 16, 2011 "Ruling," the "Ex Parte Sealed Documents" section listed all the documents that were viewed and/or printed. There cannot be a doubt that if a reasonably prudent person accidentally stumbled upon one of the documents that the following facts would be glaringly obvious: 1) The documents were *sealed* by a Court Order; 2) The documents were *ex parte* and sealed by a Court Order; 3) and the *ex parte* documents which were sealed by a Court Order were not to be viewed by anyone. By viewing the sealed ex parte documents (and sealed documents in general) the employees of the Yavapai County Attorney's Office were committing a *knowing* violation.

Knowing behavior is established by invoking, among other things, objective factors that include “the situation in which the prosecutor found himself, the evidence of actual knowledge and intent and any other factors which may give rise to an appropriate inference or conclusion.” Pool, 139 Ariz. at 108 n. 9, 677 P.2d at 271 n. 9. Applying this standard, there can be no doubt that Zawada, an experienced prosecutor, was aware of his direct disobedience of a court rule. In re Zawada, 208 Ariz. 232, 237, 92 P.3d 862, 867 (Ariz.,2004).

There can be no doubt that the experienced prosecutors in the County Attorney's Office were aware of their direct disobedience of a Court Order. They had a duty to report it, but they did not.

In a legal system which relies on the integrity of lawyers to provide honest, forthright adversarial representation as a means to achieving truth and justice, we demand that members of the bar provide nothing less.

Matter of Wetzel 143 Ariz. 35, 45, 691 P.2d 1063, 1073 (Ariz.,1984).

The notion that receipt of privileged communications imposes a duty on counsel to take some reasonable remedial action is hardly a novel concept. It stems from common sense, ethical rules and the origins of the privilege. Of course, had Department counsel entertained any doubt that they possessed the materials improperly, the opinion of the Idaho State Bar representative should have dispelled it. Yet-and this is particularly troubling for us, as it was for the trial court-the attorneys continued to collect and read documents after being advised by the state bar to send the documents to the court. As the district court concluded, counsel “each had an individual ethical and professional duty to immediately seal and submit to the Court both the initial correspondence and the correspondence subsequently received from [Department] personnel as soon as they became aware that the correspondence involved confidential communications between [inmates' counsel] and the inmate plaintiffs.”

Department counsel's actions in this case do not pass even the most lenient ethical “smell test.” They knowingly disregarded advice from the bar counsel and bypassed questions of ethics in an effort to gain advantage in this litigation. *Despite their roles as officers of the court, they failed to inform the court of their possession of the privileged materials until eight months after the first acquisition. In view of the circumstances surrounding the acquisition and use of the privileged documents, we conclude that the district court did not abuse its*

discretion in finding that the attorneys acted in bad faith and in imposing sanctions under the court's inherent power

Gomez v. Vernon 255 F.3d 1118, 1133 -1134 (C.A.9 Wash. 2001), *italics added*).

The pitfalls of inadvertent disclosure and the dilemma posed for counsel who are in receipt of such materials has prompted the American Bar Association Standing Committee on Ethics and Professional Responsibility to issue two formal opinions on the subject. These opinions reflect some of the same principles articulated in Zolin. In November 1992, the Committee issued an opinion, based upon the Model Rules of Professional Conduct, relating to the inadvertent disclosure of confidential materials. The opinion provides:

A lawyer who receives materials that on their face appear to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that they were not intended for the receiving lawyer, should refrain from examining the materials, notify the sending lawyer and abide the instructions of the lawyer who sent them.

ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 368 (1992). Two years later, the Committee issued another formal opinion, this one regarding the unsolicited receipt of privileged or confidential materials. The committee stated:

A lawyer who receives on an unauthorized basis materials of an adverse party that she knows to be privileged or confidential should, upon recognizing the privileged or confidential nature of the materials, either refrain from reviewing such materials or review them only to the extent required to determine how appropriately to proceed; she should notify her adversary's lawyer that she has such materials and should either follow instructions of the adversary's lawyer with respect to the disposition of the materials, or refrain from using the materials until a definitive resolution of the proper disposition of the materials is obtained from a court.

ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 382 (1994). (Vernon, *supra*, at 1132).

The Sixth Amendment to the United States Constitution gives an accused the right to assistance of counsel for his defense. This includes the right to be secure in the investigation and preparation of strategies and a defense. The case on point is St. v. Pecard, 196 Ariz. 371, 998

P.2d 453 (Ariz.App. Div. 1,1999):

That amendment means “to assure fairness in the adversary criminal process.” U.S. v. Morrison, 449 U.S. 361, 364 (1981). Effective representation is not possible unless the defendant is able to confer in private with his attorney. See St. v. Holland, 147 Ariz. 453, 455, 711 P.2d 592, 594 (1985). See also Ariz. R.Crim. P. 6.1(a) (“The right to be represented shall include the right to consult in private with an attorney ...”).

Thus, a defendant's right to counsel includes protection from improper intrusions by the prosecutor or other government agents. See St. v. Warner, 150 Ariz. at 127, 722 P.2d at 295. If a state agent interferes with confidential attorney-client communications, not only is there a risk of disclosure of confidential information but also such an intrusion chills free discussion between a defendant and his attorney. See *Id.*; see also St. v. Sugar, 84 N.J. 1, 417 A.2d 474, 483 (1980) (finding that interference with confidential relationship destroys counsel's effectiveness because effective defense can follow “only when a defendant has made full and frank disclosure of knowledge of events surrounding alleged crime”).

(*Id.*, at 377, 459).

The Pecard Court found a 6th Amendment violation in part because the state had opened Pecard's mail. In this case, the 6th Amendment violation is worse, the state's viewing and printing any of the Defense's 15.9 Motions were blatant invasions of the Defense investigation process and strategies. The state invaded privileged work product, violated a Court Order, viewed and printed (and presumably distributed) sealed ex parte material, printed and viewed sealed materials -- all the while feigning shock that ex parte proceedings were taking place. The Defense can never adequately demonstrate the depth of the prejudice which happen as a result of the state's clandestine and illegal invasion. The extent to which the state reacted to the sealed Defense information, illegally obtained from the state's viewing and printing sealed ex parte documents, will never be known. In this case, the Court has enough tangible evidence to presume prejudice, because there is a written record of what the state viewed and printed. The state illegally tapping the defense lawyers' phone lines to learn strategy and defenses would not

have been worse. The Pecard Court held:

Opening Pecard's privileged mail outside his presence also violated the Sixth Amendment. While the exact content of the opened mail is unknown, it was clearly identified as legal mail and was purposefully opened and read by MCSO over a period of months. Even without knowing the detailed contents, we must assume that the intercepted correspondence from Pecard's attorneys contained facts concerning the investigation of the offenses charged or defense plans and strategies.

Pecard's privileged mail from the military may not have been as clearly labeled as his other privileged mail. However, he filed numerous grievances about the opening of the Army mail and, after September 1997, all of his incoming mail was received by Lieutenant Pinto, a man familiar with the military and its designations. Yet, his mail continued to be opened.

After Pecard presented such evidence, the burden of proof shifted to the state to prove beyond a reasonable doubt that such interception was not prejudicial. See Matter of Kozak, 256 N.W.2d 717, 724 (S.D.1977) (concluding that defendant must initially show that government agents intercepted confidential communication involving facts of offenses charged or defense strategy and then burden shifts to state to prove beyond reasonable doubt that interception was not prejudicial); State v. Milligan, 40 Ohio St.3d 341, 533 N.E.2d 724, 729 (1988) (finding that defendant must present prima facie evidence of prejudice and burden of proof then shifts to state). The state has not met its burden of proof in showing that the mail interception was not prejudicial. We must thus conclude that the opening and reading of Pecard's privileged legal mail violated his Sixth Amendment rights.

As to the seizure of Pecard's letters from his attorneys, his logs of communications with his attorneys and notes of discussions with his attorneys, Pecard did not specifically state that the letters, logs and notes contained information about facts of his cases or defense strategies, although a reasonable inference from his testimony is that they may well have. However, unlike Warner, where the seized documents were preserved by the sheriff's office and could be inspected by the court, the state here could not produce any of Pecard's legal materials irretrievably taken from his cell by MCSO.

The information contained in these materials was within the exclusive control of MCSO. By failing to produce these materials, the state failed to rebut the presumption that Pecard's Sixth Amendment rights again were violated by their seizure. Cf. Matter of Kozak, 256 N.W.2d at 725 (concluding that state's inability to produce tape recordings of intercepted confidential communications with attorneys or provide testimony about them forecloses discovery of the communications by defendant and constitutes Sixth Amendment violation).

St. v. Pecard, 196 Ariz. 371, 378, 998 P.2d 453, 460 (Ariz.App. Div. 1,1999).

In this case, the state will not be able to produce any cognizable evidence of how its trial preparation, investigations and case strategies were effected by its illegal interception of sealed ex parte documents. It was a "ripple effect" to be sure. Because the Defense has now presented sufficient evidence, the burden of proof shifted to the state to prove beyond a reasonable doubt that such interception was not prejudicial. Because the state will not be able to produce any cognizable evidence this ripple effect, it forecloses discovery of the ripple effect by defendant and constitutes Sixth Amendment violation.

A prosecutor has a special place in our system of justice. In State v. Talmadge, the Arizona Supreme Court held, "a prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that a defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." 196 Ariz. 436 (2000), (Citing, Ariz. R. Sup. Ct. 42 ER 3.8, Comment 1).

Both ethical rules and case law oblige a prosecutor to see that defendants receive a fair trial. See: St. v. Cornell, 179 Ariz. 314, 331, 878 P.2d 1352, 1369 (1994); St. v. Rodriguez, 192 Ariz. 58, 64, 961 P.2d 1006, 1012 (1998).

In this case, the state has a duty to insure the Defendant receives procedural justice. The Defendant necessarily must rely on the ethical fortitude of the state. Sadly, the state abandoned their duties as ministers of justice in the worst possible way: they invaded the constitutionally protected work product of the Defense. It would not have been worse had they burglarized the offices of the Defense and copied work product and/or privileged documents.

The fact that the Court Ordered the ex parte documents sealed is a huge problem for the state. From a review of the record, the only legitimate ways the state knew an ex parte document

had been sealed (and that a ex parte hearing had taken place) was through Judge Lindberg's July 6, 2009 Minute Entry Order (*supra*), and the Defendant's July 6, 2009 15.9 Motion (*supra*) both of which were copied to Joe Butner, lead attorney for the state at the time (*supra*, pgs. 5, 7). If the state disagreed with Judge Lindberg's July 6, 2009 Order (or any other Order) it had a proper *legal* avenue to seek a *legal* remedy: special action. The state knows this option, because they are very fond of parroting Morehart v. Barton (*supra*) in every motion.

Instead, the state willfully violated a Court Order, by viewing and printing sealed ex parte documents. The state was using improper methods to obtain a conviction, a violation of their special obligations and responsibilities as prosecutors.

The prosecutor has an obligation to seek justice, not merely a conviction, and *must refrain from using improper methods* to obtain a conviction. See Bible, 175 Ariz. at 600, 858 P.2d at 1203; Pool, 139 Ariz. at 103, 677 P.2d at 266. "We emphasize that the responsibilities of a prosecutor go beyond the duty to convict defendants. Pursuant to its role of 'minister of justice,' the prosecution has a duty to see that defendants receive a fair trial. Ariz. R. Sup.Ct. 42, E.R. 3.8, comment; State v. Cornell, 179 Ariz. 314, 331, 878 P.2d 1352, 1369 (1994)." State v. Rodriguez, 192 Ariz. 58, 64, 961 P.2d 1006, 1012 (1998).

St. v. Hughes, 193 Ariz. 72, 80, 969 P.2d 1184, 1192 (Ariz.,1998).

This has to be considered by this Court as a violation committed by attorneys -- even though some non-attorney staff members were involved. The state cannot claim that these were "rogue employees, acting on their own." No, the staff members are employees of the Yavapai County Attorney, and thus agents of that agency. The principle is responsible for the acts of the agents. The County Attorney is responsible to the actions of her employees. Besides, the obvious answer to why the staff members viewed and printed sealed ex parte documents is that they were instructed to by supervisors.

Arizona Rules of Professional Conduct, Ethical Rule (E.R.) 5.3. Responsibilities

Regarding Nonlawyer Assistants states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm *shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;*

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) *a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:*

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(ER 5.3, italics added).

In this case, non-lawyers viewed (and printed) ex parte documents an incredible 46 times, and viewed/printed sealed documents 79 times.

Then there is Deputy County Attorney Jack Fields. As an attorney, Mr. Fields is not only bound by the laws of the state of Arizona (for instance, not to violate a Court Order), but also the Arizona Rules of Professional Conduct, which state:

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. *A lawyer shall not counsel or assist another person to do any such act;*

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) *knowingly disobey an obligation under the rules of a tribunal* except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(E.R. 3.4, italics added).

ARS §38-462(A), "Powers and duties of deputies," states:

Unless otherwise provided, each deputy of a state or county officer possesses the powers and may perform the duties prescribed by law for the office of the principal.

Under ARS §38-462(A), the Yavapai County Attorney is responsible for Mr. Fields actions, and under E.R. 3.4 the Yavapai County Attorney is responsible for all violations, whether by Mr. Fields or any deputy county attorney who instructed a staff member to view and/or print sealed ex parte documents. E.R. 8.4 states, in the applicable part,

It is professional misconduct for a lawyer to:

(a) *violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;*

(b) *commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;*

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice ...

The Yavapai County attorney violated sections a - d, above.

The violations by the Yavapai County Attorney's Office may be viewed as contempt of court, for wilfully violating the Court's Orders (as thoroughly outline above). This Court, by and through Judge Mackey and the Clerk of Courts, has been investigating this case. Perhaps that investigation should include contempt of court and possible ethical violations.

3. DISMISSAL IS THE REMEDY

There is no justice in allowing a party to benefit from its own misconduct. The Court has to consider whether or not a dismissal with prejudice is justified. Here, the state's actions were intentional, blatant, illegal and possibly unethical. The state violated what should be sacred amongst all Americans: the Constitutional Right to prepare and present a defense, unmolested by illegal invasions into the fragile privacy of strategy and trial preparation. The state violated that fragile privacy -- and Court Orders in its obsessive zeal to find out what experts and defenses the Defense team were exploring.

It was not just a little invasion. It was not by accident. It was not inadvertent. No, the state intentionally viewed and printed ex parte and sealed pleadings using the OnBase system, 164 times, because it was obsessed with the subject matter and was conducting a full-bore, illegal investigation. The Ex Parte documents were viewed and printed by the Yavapai County Attorney's Office, Yavapai County Victim Services a total of 60 times!

The Pecard Court held:

Given the MCSO's blatant Sixth Amendment violations, the crucial legal question becomes whether the trial court's dismissal of the indictments was the appropriate remedy. In addition to consideration of a defendant's own constitutional rights,

courts have also recognized "*society's interest in the administration of criminal justice.*" United States v. Morrison, 449 U.S. at 364, 101 S.Ct. 665. Courts narrowly tailor remedies to Sixth Amendment violations to avoid unnecessarily infringing on this societal interest. See *id.* As stated by the United States Supreme Court:

Our approach has thus been to identify and then neutralize the taint by tailoring relief appropriate in the circumstances to assure the defendant the effective assistance of counsel and a fair trial. The premise of our prior cases is that the constitutional infringement identified has had or threatens some adverse effect upon the effectiveness of counsel's representation or has produced some other prejudice to the defense. Absent such impact on the criminal proceeding, however, there is no basis for imposing a remedy in that proceeding, which can go forward with full recognition of the defendant's right to counsel and to a fair trial.

More particularly, absent demonstrable prejudice, or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate. *Id.* at 365, 101 S.Ct. 665.

St. v. Pecard, 196 Ariz. 371, 379, 998 P.2d 453, 461 (Ariz.App. Div. 1,1999).

After what has been uncovered in this case, can anyone have faith in the Defendant's ability to receive a fair trial with the Yavapai County Attorney involved? Can anyone make a straight faced argument that the Yavapai County Attorney is the least bit concerned with society's interest in the administration of criminal justice?

The answer to both is an emphatic "NO!"

Though the Pecard Court eventually reinstated the charges against its defendant, it said:

As a law enforcement agency, MCSO is sworn to uphold the nation's law in its entirety, including the Fifth and Sixth Amendments and the presumption of innocence, regardless of zeal, circumstance or person. Its failure to do so denies the law's protections not only to the defendant but also to his alleged victims and even society as a whole. Thomas More, Lord Chancellor of England, said it well long ago:

This country's planted thick with laws from coast to coast ... and if you cut them down ... do you really think you could stand upright in the winds that would blow then? Yes, I'd give [even] the Devil benefit of law for my own safety's sake.

St. v. Pecard, 196 Ariz. 371, 381, 998 P.2d 453, 463 (Ariz.App. Div. 1,1999), quoting Robert Bolt, "A Man for All Seasons," 66 (Vintage 1990).

Here, the Yavapai County Sheriff violated a Court Order by viewing sealed documents. But the Sheriff's actions were merely the tip of the iceberg. It was the Yavapai County Attorney which committed the most egregious acts. As a law firm, the Yavapai County Attorney is sworn to uphold the nation's laws in totality, including the Fifth and Sixth Amendments of the U.S. Constitution, and the presumption of innocence, regardless of zeal, circumstance or person. Its failure to do so denies the law's protections not only to the Defendant, but also to his alleged victims and even *society as a whole*. (paraphrasing Pecard).

Imagine the Yavapai County Attorney prosecuting a kiddie porn case, in which the defendant claimed that it was only "accidental" or only "incidental" that the documents had been viewed and printed 164 times over a two-year period. The County Attorney would view that defense as absurd. Equally absurd will be the Yavapai County Attorney eventually claiming that it was only "accidental" or only "incidental" that the sealed ex parte documents and sealed documents in this case had been viewed and printed 164 times over a two-year period.

This case must be dismissed.

4. DISQUALIFICATION IS AN ALTERNATIVE, AND APPROPRIATE REMEDY

If the court is unwilling to dismiss the case, then disqualification of the entire Yavapai County Attorney's Office and the Yavapai County Sheriff is appropriate for the following reasons:

a) The Yavapai County Attorney can not prevent the spread of invidious information to its attorneys, or the Yavapai County Sheriff. The state's illegal actions must be imputed to the head of the office down. The state intentionally viewed and printed ex parte and sealed pleadings using the OnBase system, because it was obsessed with the subject matter and was conducting a full-bore, illegal investigation, *supra*, which will deprive the Defendant of a fair Trial.

b) The appearance of impropriety in this case is clear. The state intentionally viewed and printed ex parte and sealed pleadings using the OnBase system, because it was obsessed with the subject matter and was conducting a full-bore, illegal investigation, *supra*. In attempting to balance the interests of the state and the Defendant, the appearance of impropriety is important. Disqualification is the only remedy.

c) This motion is not made for harassment purposes.

d) Disqualification of the Yavapai County Attorney does not prejudice the State of Arizona. The state would not lose evidence as the result of a disqualification. The state would not lose witnesses as the result of a disqualification. The prosecution against the Defendant would remain intact. See generally: St. v. Gottsfield, 171 Ariz. 195, 829 P.2d 1241 (Ct. App. Div. I 1992).

A prosecuting attorney is held to a higher standard of conduct than an ordinary attorney. State v. Noriega, 142 Ariz. 474, 690 P.2d 775 (1984). A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice. Comment, Rules of Professional Conduct, ER 3.8.

The United States Supreme Court has observed that “a prosecutor, while free to strike hard blows, ‘is not at liberty to strike foul ones.’” Wilson v. People, 743 P.2d 415, 418 (Colo. 1987) (quoting Berger v. U.S., 295 U.S. 78, 88 (1935)). In Wilson, the high court also pointed out that because a prosecutor represents the “sovereign whose obligation to govern impartially is as compelling as its obligation to govern at all,” the prosecutor's interest in a criminal prosecution “is not that it shall win a case, but that Justice shall be done.” Wilson, 743 P.2d at 418 (quoting Berger, 295 U.S. at 88). This governmental responsibility also imposes upon the prosecutor the responsibility to refrain from improper methods calculated to produce a wrongful conviction as well as to use every legitimate means to bring about a just one. Wilson, 743 P.2d at 418.

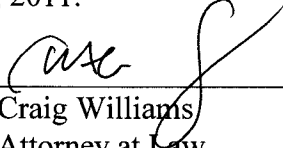
CONCLUSION

What has happened in this case is way beyond the pale. It is outrageous. It should shock


the conscious of the judiciary. The state intentionally viewed and printed ex parte and sealed pleadings using the OnBase system, because it was obsessed with the subject matter and was conducting a full-bore, illegal investigation. The state changed strategies and filed new charges in part based on their illegal breach of sealed ex partes documents/hearings. The state's murder case against the Defendant has always been very weak. There are powerful facts that remain intact after years of investigation. The state cannot place the Defendant at the scene of the crime: No DNA, no blood, no fingerprints or other biological evidence, and no confession. Importantly, these facts will never change – no new evidence will surface that could place the Defendant at the scene of the crime – because he was not there and did not murder Carol Kennedy. Those facts are probably what sent the state into a frenzy, searching through forbidden fruit: sealed ex parte documents.

A court has the inherent power to sanction a party or its lawyers if it acts in “willful disobedience of a court order ... or when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons,” as well as for “willful[] abuse [of the] judicial processes.” Vernon, *supra*. For the above-stated reasons, and the appearance of impropriety, the Defendant is asking the Court to DISMISS THE CASE WITH PREJUDICE. In the alternative, the Court should DISQUALIFY the Yavapai County Attorney from the Defendant's pending case.

RESPECTFULLY SUBMITTED this May 2, 2011.



Craig Williams
Attorney at Law

A copy of the foregoing delivered to:
Hon. Warren Darrow, Division PTB, Hon. David Mackey, Yavapai County Presiding Judge
Jeff Paupore, Steve Young Yavapai County Attorney's Office
The Defendant
Greg Parzych, via e-mailed .pdf
by:  _____

**FILED EX PARTE
AND UNDER SEAL**

SEP 24 2010
ORIGINAL FILED THIS
DAY OF
JEANNE HICKS
Katherine Glenn
[copy]

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	)	No. P1300CR20081339
)	
Plaintiff,	)	Div. 6
)	
vs.	)	DEFENDANT'S MOTION FOR
	)	TRANSCRIPT OF UNDER SEAL
STEVEN CARROLL DEMOCKER,	)	HEARING
)	
Defendant.)	
)	
)	
	)	UNDER SEAL, EX PARTE

Steven DeMocker, by and through counsel, hereby requests an under seal transcript be prepared and provided to the defense for the September 24, 2010 hearing held under seal.

DATED this 24th day of September, 2010.

**FILED EX PARTE
AND UNDER SEAL**

SEP 2, 2010
FILED
B. Chamberlain
Deputy

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENSE REQUEST PURSUANT
TO ETHICAL RULE 3.3**

) **FILED EX PARTE**

) **EXPEDITED**

) **HEARING REQUESTED**

Defense counsel for Mr. DeMocker hereby request an immediate ex parte proceeding pursuant to Ethical Rule 3.3. On September 19, 2010 counsel became aware of information that must be corrected pursuant to their ethical obligations under Ethical Rule 3.3(a). Counsel believe that this information may also effect counsels' ability to

SEP 17 2010

UNOFFICIAL FILING THIS
DAY OF
JEANNE HICKS
Clerk Superior Court, Yavapai County
By **S. KELBAUGH**
Deputy

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,	)	Div. 6
)	
vs.	)	NOTICE OF FILING
)	
STEVEN CARROLL DEMOCKER,	)	(EX PARTE, UNDER SEAL)
)	
Defendant.)	
)	
)	
)	

Please take notice that Defendant has this day filed the attached document ex parte and under seal.

DATED this 17 day of September, 2010.

7/10/2009 Hearing - Ex Parte - UNDER SEAL

JULY 10, 2009

2:22 P.M.

EX PARTE PROCEEDING

APPEARANCES:

FOR THE DEFENDANT: MR. JOHN SEARS AND MR. LARRY
HAMMOND.

THE COURT: We are going to make a record.

This is CR 2008-1339, State versus Steven
Carroll DeMocker. This is a requested ex parte proceeding.
I received a motion through defense counsel -- July 6?

MR. SEARS: I believe so.

THE COURT: -- to file applications pursuant
to Rule 15.9 for ex parte, in camera, under seal type of
hearing. Rule 15.9 contemplates no ex parte proceedings,
communications or requests unless a showing is made
concerning the need for confidentiality, but also requires
such proceedings to still be recorded verbatim and made a
part of the record available for appellate review.

I believed, based on the motion that was
presented July 6th, that a proper showing had been made
concerning the need for confidentiality based upon the
written motion. I had ordered that motion to be sealed by
the clerk.

Did you want to make any further record,
in addition to what you said in the written motion?

JUL 20 2010

ORIGINAL FILED THIS _____
DAY OF _____
JUL 20 2010
By B. Chamberlain

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	)	No. P1300CR20081339
)	
Plaintiff,	)	Div. 6
)	
vs.	)	DEFENDANT'S MOTION FOR
	)	TRANSCRIPT OF UNDER SEAL
STEVEN CARROLL DEMOCKER,	)	HEARING
)	
Defendant.)	
)	
)	
	)	UNDER SEAL, EX PARTE

Steven DeMocker, by and through counsel, hereby requests an under seal transcript be prepared and provided to the defense for the July 16, 2010 hearing held under seal.

DATED this 20th day of July, 2010.

ORIGINAL FILED THIS
DAY OF JUL 16 2010
JEANNE MILMS
Clerk Superior Court
By S. KELBAUGH
Deputy

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S MOTION FOR**
) **TRANSCRIPT OF EX PARTE**
) **UNDER SEAL HEARING**

) **EX PARTE, IN CAMERA,**
) **UNDER SEAL**

Steven DeMocker, by and through counsel, hereby requests an ex parte under seal transcript be prepared and provided to the defense for the June 10, 2009 hearing held ex parte, in camera, and under seal. (Minute Entry from hearing attached).

DATED this 16th day of July, 2010.

JUL 10 2009

ORIGINAL FILED THIS
DAY OF
JEANNE HICKS
CLERK SUPERIOR COURT
BY Amber L. Harcey DEPUTY

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
107 North Cortez Street
Suite 104
Prescott, Arizona 86301
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339

Div. 6

**DEFENDANT'S MOTION FOR
DETERMINATION OF
INDIGENCY AND FOR RULE
15.9 APPOINTMENTS**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

Defendant Steven C. DeMocker, by and through counsel, hereby moves this court under Rule 6.4 to make a determination of indigency and under Rule 15.9 (a) and (c) to appoint a mitigation expert, investigators, paralegal, consulting forensic computer expert, consulting DNA expert, consulting cell phone tower expert, consulting blood spatter and crime scene expert, consulting fingerprint expert, and a consulting forensic pathologist.

ORIGINAL FILED THIS 11 08 2010
DAY OF _____
JEANNE HICKS
Clerk Superior Court
By [Signature]
Deputy

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,
Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,
Defendant.

No. P1300CR20081339

Div. 6

**DEFENDANT'S REQUEST FOR
CONFERENCE WITH THE
COURT**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

Defendant Steven C. DeMocker, by and through counsel, hereby requests that this Court conduct a brief ex part, in camera conference with defense counsel under Rule 15.9 to discuss the status of funding for the defense in this matter. Defendant suggests that it be held tomorrow, July 9, 2010 either before or after the regularly scheduled hearing in this case currently set for 10:00 am.

DATED this 8th day of July, 2010.

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

ORIGINAL FILED THIS
DAY OF APR 28 2011
JEANNE HICKS
Clerk Superior Court
By Deputy
S. KELBAUGH

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S MOTION FOR**
) **RULE 15.9 APPOINTMENT OF**
) **DARKO BABIC**

) **EX PARTE, IN CAMERA, UNDER**
) **SEAL**

22 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
23 Court under Rule 15.9 (a) and (c) to appoint expert Darko Babic to consult with counsel
24 on matters relating to materials testing and failure analysis.

25 **MOTION**

26 **1. Counsel Request That the Court Appoint Darko Babic as a Consulting**
27 **Expert on Matters Relating to Materials Testing.**

28 Counsel requests the appointment of Darko Babic under Rule 15.9. The State
has alleged that a golf club with a graphite shaft was the murder weapon. Mr. Babic is

ORIGINAL FILED THIS APR 13 2010
DAY OF
JEANNE HICKS
Clerk Superior Court, Yavapai County
By Deputy

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Div. 6

DEFENDANT'S MOTION RULE
15.9 APPOINTMENT OF DR.
THOMAS REIDY

(EX PARTE, IN CAMERA, UNDER
SEAL)

Defendant Steven C. DeMocker, by and through counsel, hereby moves this
Court under Rule 15.9 (a) and (c) to appoint expert Dr. Thomas Reidy to consult with
counsel in matters relating to future dangerousness and violence risk assessment.

MOTION

- 1. Counsel Request That the Court Appoint Dr. Thomas Reidy as a Consulting Expert on Future Dangerousness and Violence Risk Assessment.**

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

ORIGINAL FILED THIS 1-5-20
BY OF
JEANNE HICKS
Clerk Superior Court
By N. Seguir
Deputy

15
16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA,

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S MOTION RULE**
) **15.9 APPOINTMENT OF DR.**
) **ANNE KROMAN**

) **EX PARTE, IN CAMERA, UNDER**
) **SEAL**

23 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
24 Court under Rule 15.9 (a) and (c) to appoint expert Dr. Anne Kroman to consult with
25 counsel in matters relating to biomechanics of bone, cranial biomechanics and forensic
26 anthropology.

27 **MOTION**

- 28 **1. Counsel Request That the Court Appoint Dr. Anne Kroman as a Consulting Expert on Matters Relating to Biomechanics of Bone, Cranial Biomechanics and Forensic Anthropology.**

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

FILED 11 2015
ORIGINAL FILED THIS _____
DAY OF _____
JEANNE HICKS
Clerk Superior Court
By _____
Deputy

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

No. P1300CR20081339

Div. 6

DEFENDANT'S APPLICATION
FOR RULE 15.9 APPOINTMENT
OF SHOEPRINT IMPRESSION
EXPERT

(EX PARTE, IN CAMERA, UNDER
SEAL)

22 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
23 court under Rule 15.9 (a) and (c) to appoint a consulting shoe print impression.

24 **MOTION**

25 **1. Counsel Request That the Court Appoint Shoeprint Impression Expert**
26 **Randall Anglin Under Rule 15.9.**

27 Under Rule 15.9 (a) and (b) an indigent capital defendant may seek appointment
28 of expert witnesses. This Court has determined that Mr. DeMocker is indigent.

ORIGINAL FILED THIS 08/11/08
DAY OF
JEANNE FICKS
Clerk Superior Court
By B. Hamilton
Deputy

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, AZ 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Div. 6

**DEFENDANT'S MOTION FOR
RULE 15.9 APPOINTMENT OF
ADDITIONAL PARALEGAL
ASSISTANCE**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

Defendant Steven C. DeMocker, by and through counsel, hereby moves this court under Rule 15.9 (a) and (c) to appoint additional paralegals to assist with the extraordinary volume of evidence, document management, and organizational needs in this highly complex capital case.

MOTION

FILED UNDER SEAL

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

ORIGINAL FILED THIS 11 11 2010
DAY OF
JEANNE HICKS
Clerk Superior Court
By N. Sequi
Deputy

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

22 No. P1300CR20081339

23 Div. 6

24 **DEFENDANT'S APPLICATION
25 FOR RULE 15.9 APPOINTMENT
26 OF DR. NORAH RUDIN**

27 **(EX PARTE, IN CAMERA, UNDER
28 SEAL)**

29 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
30 Court under Rule 15.9 (a) and (c) to appoint expert Dr. Norah Rudin to consult with
31 counsel in matters relating to DNA.

32 **MOTION**

33 **1. Counsel Request That the Court Appoint Norah Rudin as a Consulting
34 Expert on Matters Relating to DNA.**

35 Counsel requests the appointment of Norah Rudin under Rule 15.9. To date the
36 State had produced thousands of pages of lab reports and has disclosed four DNA

FILED UNDER SEAL

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

ORIGINAL FILED JAN 11 2010
DAY OF
JEANNE HICKS
Clerk Superior Court
By N. Sequi
Deputy

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S MOTION FOR
RULE 15.9 APPOINTMENT OF
DR. ALISON GALLOWAY**

) **(EX PARTE, IN CAMERA, UNDER
SEAL)**

22 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
23 Court under Rule 15.9 (a) and (c) to appoint expert Dr. Alison Galloway to consult with
24 counsel in matters relating to forensic anthropology.

25 **MOTION**

26 **1. Counsel Request That the Court Appoint Dr. Alison Galloway as a
Consulting Expert on Matters Relating to Forensic Anthropology.**

27 Counsel requests the appointment of Alison Galloway under Rule 15.9. The
28 State has disclosed Dr. Keen, a forensic pathologist, and Dr. Fulginiti, a forensic

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, AZ 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

15
16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA,

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

23 No. P1300CR20081339

24 Div. 6

25 **DEFENDANT'S MOTION FOR
26 RECONSIDERATION OF
27 MOTION FOR RULE 15.9
28 APPOINTMENT OF DEFENSE
BASED VICTIM OUTREACH
SPECIALIST ANGELA MASON**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

29 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
30 Court to reconsider its Order denying the assistance of a defense based victim outreach
31 specialist under Rule 15.9 (a) and (c).

32 **MOTION**

- 33 1. **The Court Should Reconsider its Denial of the Motion for Appointment of**
34 **Defense Based Victim Outreach Specialist Angela Mason.**

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, AZ 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

15
16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA,

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

23 No. P1300CR20081339

24 Div. 6

25 **DEFENDANT'S MOTION FOR**
26 **RULE 15.9 APPOINTMENT OF**
27 **PARALEGAL ASSISTANT**
28 **KAREN MCCLAIN**

(EX PARTE, IN CAMERA, UNDER SEAL)

29 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
30 court under Rule 15.9 (a) and (c) to appoint a paralegal assistant to assist with
31 management of the extraordinary volume of evidence in this case.

32 **MOTION**

- 33 1. **Counsel Request That the Court Appoint Paralegal Assistant Karen**
34 **McClain.**

NOV 12 2008
ORIGINAL FILED THIS
DATE
JAN 15 2009
Clerk Superior Court
By Shaunna Kellogg
Deputy

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

22 No. P1300CR20081339

23 Div. 6

24 **DEFENDANT'S REVISED
APPLICATION FOR RULE 15.9
APPOINTMENT OF PETER
BARNETT**

25 **(EX PARTE, IN CAMERA, UNDER
SEAL)**

26 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
27 Court under Rule 15.9 (a) and (c) to appoint expert Peter Barnett to consult with counsel
28 in matters relating to blood spatter and the crime scene, as well as footprint and tire
impressions.

MOTION

1. **Counsel Request That the Court Appoint Peter Barnett as a Consulting
Expert on Matters Relating to Footprint and Tire Impressions, Blood
Spatter and the Crime Scene.**

60/12/09

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 107 North Cortez Street
11 Suite 104
12 Prescott, Arizona 86301
13 (928) 778-5208
14 John.Sears@azbar.org

15 Attorneys for Defendant

16
17 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
18 IN AND FOR THE COUNTY OF YAVAPAI

19 STATE OF ARIZONA,
20
21 Plaintiff,

22 vs.

23 STEVEN CARROLL DEMOCKER,
24 Defendant.

25) No. P1300CR20081339

26) Div. 6

27) **DEFENDANT'S MOTION FOR**
28) **RULE 15.9 APPOINTMENT OF**
) **FIELD RESEARCHER**

) **(EX PARTE, IN CAMERA, UNDER**
) **SEAL)**

29
30 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
31 court under Rule 15.9 (a) and (c) to appoint a researcher to conduct field research
32 needed in connection with our omnibus challenge to the Arizona death penalty.

33 **MOTION**

- 34
35 1. **Counsel Request That the Court Appoint Field Research Assistant Kindra**
36 **Helferich.**

OCT - 2 2009
ORIGINAL FILED THIS
DAY OF
JEANNE HICKS
Clerk Superior Court
By N. Seguir

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 107 North Cortez Street
11 Suite 104
12 Prescott, Arizona 86301
13 (928) 778-5208
14 John.Sears@azbar.org

15 Attorneys for Defendant

16
17 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
18 IN AND FOR THE COUNTY OF YAVAPAI

19 STATE OF ARIZONA,

20 Plaintiff,

21 vs.

22 STEVEN CARROLL DEMOCKER,
23 Defendant.

24 No. P1300CR20081339

25 Div. 6

26 **DEFENDANT'S MOTION FOR
27 RULE 15.9 APPOINTMENT OF A
28 DEFENSE BASED VICTIM
OUTREACH SPECIALIST**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

29 Defendant Steven C. DeMocker, by and through counsel, hereby moves this
30 court under Rule 15.9 (a) and (c) to appoint a defense based victim outreach specialist.

31 **MOTION**

32 **1. Counsel Request That the Court Appoint Defense Based Victim Outreach
33 Specialist Angela Mason.**

34 Under Rule 15.9 (a) and (b), an indigent capital defendant may seek appointment
35 of experts. This Court has determined that Mr. DeMocker is indigent.

36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085

FILED 8/31/09

ORIGINAL FILED IN _____
By _____

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
107 North Cortez Street
Suite 104
Prescott, Arizona 86301
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339
Div. 6

**DEFENDANT'S MOTION FOR
RULE 15.9 APPOINTMENT OF
EXPERT JURY AND TRIAL
CONSULTANT**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

Defendant Steven C. DeMocker, by and through counsel, hereby moves this
court under Rule 15.9(a) and (c) to appoint a an expert jury and trial consultant.

MOTION

**1. Counsel Request That the Court Appoint Jury and Trial Consulting Expert
Joe Guastafarro**

Under Rule 15.9(a) and (b), an indigent capital defendant may seek appointment
of expert witnesses. This Court has determined that Mr. DeMocker is indigent.

8/31/09
D. Guastafarro

AUG 18 2008

COPY

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
107 North Cortez Street
Suite 104
Prescott, Arizona 86301
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339

Div. 6

**DEFENDANT'S APPLICATION
FOR RULE 15.9 APPOINTMENT
OF CONSULTING
NEUROPSYCHOLOGIST,
FINANCIAL FORENSIC
EXPERT, AND CONSULTING
FOOTPRINT AND TIRE
IMPRESSION FORENSIC
EXPERT**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

Defendant Steven C. DeMocker, by and through counsel, hereby moves this
court under Rule 15.9 (a) and (c) to appoint certain consulting forensic experts, as
detailed below.

Handwritten: COPY

FILED UNDER SEAL

ORIGINAL FILED THIS JUL 21 2009
DAY OF
JILLIANNE HICKS
Clerk Superior Court
By V. Seguin

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
107 North Cortez Street
Suite 104
Prescott, Arizona 86301
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339

Div. 6

**DEFENDANT'S MOTION FOR
RULE 15.9 APPOINTMENT OF
TRANSCRIPTION AND
DOCUMENT EXPERTS**

**(EX PARTE, IN CAMERA, UNDER
SEAL)**

Defendant Steven C. DeMocker, by and through counsel, hereby moves this
court under Rule 15.9 (a) and (c) to appoint transcription and document experts.

MOTION

**1. Counsel Request That the Court Appoint AVTranz and Teris Under Rule
15.9.**

Under Rule 15.9 (a) and (b) an indigent capital defendant may seek appointment
of experts who are reasonably necessary to present a defense adequately at trial or
sentencing. This Court has determined that Mr. DeMocker is indigent.

Barb Paris - (Prescott Misdemeanor division)

Sealed documents viewed:

1. 11/04/08 - Transcript of Grand Jury Proceeding - Viewed
2. 08/03/09 - Order for Rule 15.9 - Viewed
3. 09/02/09 - Order for Rule 15.9 Appointment - Viewed
4. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
5. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
6. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
7. 03/29/10 - Reply re Motion to Preclude - Viewed
8. 03/26/10 - Order Appointing - Viewed
9. 04/28/10 - Order re Rule 15.9 - Viewed
10. 05/11/10 - Miscellaneous - Jury Message - Viewed

Ex Parte documents viewed:

1. 08/31/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
2. 09/02/09 - Order for Rule 15.9 Appointment (filed ex parte) - Viewed
3. 12/23/09 - Order: Denying Motion for Reconsideration (filed ex parte) - Viewed
4. 01/14/10 - Order Appointing Rule 15.9 (Application filed ex parte) - Viewed
5. 01/14/10 - Order Appointing Rule 15.9 (Motion filed ex parte) - Viewed
6. 01/14/10 - Order Appointing Rule 15.9 - Viewed
7. 03/26/10 - Order Appointing Rule 15.9 (Motion filed ex parte) - Viewed
8. 04/28/10 - Order for Rule 15.9 Appointment (Motion filed ex parte) - Viewed

Barbara Genego - (Prescott division)

Sealed documents viewed and printed:

1. 03/26/10 - Order Appointing - Printed
2. 04/28/10 - Order for Rule 15.9 - Printed
3. 09/28/10 - Order Under Advisement Ruling (Motion to Withdraw) - Printed

Ex Parte documents viewed and printed:

1. 03/26/10 - Order Appointing (Motion filed ex parte) - Printed
2. 04/28/10 - Order for Rule 15.9 (Motion filed ex parte) - Printed

Carol Landis - (Admin division)

Sealed documents viewed:

1. 11/04/08 - Transcript of Grand Jury Proceedings - Viewed

Deb Cowell - (Prescott/Trial division)

Sealed documents viewed:

1. 07/12/10 - Objection to state's late disclosure - Viewed

Ex Parte documents viewed and printed:

1. 10/02/09 - Motion for Rule 15.9 (filed ex parte) - Viewed and Printed
2. 11/12/09 - Application: Revised Application for 15.9 (filed ex parte) - Viewed
3. 12/11/09 - Motion for Rule 15.9 (filed ex parte) - Viewed and Printed

Kathy Durrer - (Prescott/Trial division)

Sealed documents viewed:

1. 09/02/09 - Order Rule 15.9 Appointment - Viewed

Ex Parte documents viewed:

1. 09/02/09 - Order Rule 15.9 Appointment - Viewed

Jack Fields - (Civil division - Arizona State Bar #012470)

Sealed documents viewed:

1. 09/02/09 - Order for Rule 15.9 Appointment - Viewed
2. 04/28/10 - Order for Rule 15.9 Appointment - Viewed
3. 05/04/10 - Jury Message - Viewed
4. 05/05/10 - Jury Message - Viewed
5. 05/06/10 - Jury Message - Viewed
6. 05/06/10 - Jury Message - Viewed
7. 05/11/10 - Jury Message - Viewed
8. 06/02/10 - Jury Message - Viewed
9. 06/08/10 - Jury Message - Viewed
10. 06/17/10 - Jury Message - Viewed
11. 06/30/10 - Jury Message - Viewed
12. 07/07/10 - Jury Message - Viewed
13. 07/08/10 - Supplement to state's Motion to Extend Time - Viewed
14. 07/12/10 - Motion to Determine Counsel - Viewed
15. 07/12/10 - Objection to state's Late Disclosure - Viewed
16. 08/05/10 - Order Sealing Document - Viewed
17. 08/20/10 - Order Under Advisement Ruling - Viewed
18. 08/20/10 - Order Under Advisement Ruling - Viewed

19. 08/20/10 - Order Under Advisement Ruling - Viewed
20. 08/20/10 - Order Under Advisement Ruling - Viewed
21. 08/30/10 - Order Granting (Request to Unseal documents) - Viewed
22. 09/16/10 - Court Order/Ruling - Viewed
23. 09/22/10 - Motion and Order to seal - Viewed
24. 09/22/10 - Order sealing document - Viewed
25. 09/28/10 - Order Under Advisement Ruling - Viewed

Ex Parte documents viewed:

1. 09/02/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed
2. 10/02/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
3. 10/28/09 - Notice filling statement (filed ex parte) - Viewed
4. 11/12/09 - Application Revised Application for Rule 15.9 (filed ex parte) - Viewed
5. 12/09/09 - Order denying (filed ex parte) - Viewed
6. 12/11/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
7. 12/17/09 - Motion for Reconsideration re Rule 15.9 (filed ex parte) - Viewed
8. 01/11/10 - Motion (filed ex parte) - Viewed
9. 01/11/10 - Motion for Rule 15.9 (filed ex parte) - Viewed
10. 04/28/10 - Order for Rule 15.9 (filed ex parte) - Viewed
11. 05/13/10 - Sealed Minute Entry re Ex Parte in chambers - Viewed
12. 06/23/10 - Reply to Supplemental Request re Sanctions - Viewed
13. 07/08/10 - Request for Conference with Court (filed ex parte) - Viewed
14. 09/17/10 - Notice filling Transcript (filed ex parte) - Viewed

Kurt Olson - (Victim Services/Tech division)

Sealed documents viewed:

1. 08/03/09 - Order for Rule 15.9 - Viewed

Marie Higgins - (Victim Services/Charging division)

Sealed documents viewed:

1. 07/12/10 - Objection to state's Late Disclosure - Viewed
2. 09/22/10 - Order Sealing Document - Viewed
3. 10/15/10 - Motion for Reconsideration re Motion to Withdraw - Viewed

Ex Parte documents viewed:

1. 10/02/09 - Motion for Rule 15.9 (filed ex parte) - Viewed
2. 11/12/09 - Revised Application re Rule 15.9 Appointment (filed ex parte) - Viewed

Pam Moreton - (Victim Services/Prescott division)

Sealed documents viewed:

1. 05/11/10 - Jury Message - Viewed

Pam Spear - (Verde division)

Sealed documents viewed and printed:

1. 02/19/10 - Order for Rule 15.9 - Printed
2. 06/30/10 - Jury Message - Viewed
3. 08/20/10 - Order Under Advisement Ruling - Printed
4. 08/20/10 - Order Under Advisement Ruling - Printed
5. 08/20/10 - Order Under Advisement Ruling - Printed
6. 08/20/10 - Order Under Advisement Ruling - Printed
7. 08/30/10 - Order Granting Request to Unseal - Printed

Ex Parte documents viewed:

1. 02/19/10 - Order for Rule 15.9 (filed ex parte) - Printed
2. 06/23/10 - Reply to Supplemental Request re Sanctions (filed ex parte) - Viewed

Pat Kavanaugh - (Prescott/Trial division)

Sealed documents viewed:

1. 07/12/10 - Objection to state's Late Disclosure - Viewed

Paula Glover - (Prescott Misdemeanor division)

Sealed documents viewed and printed:

1. 10/31/08 - Grand Jury Minutes - Viewed
2. 11/04/08 - Transcript of Grand Jury Proceedings - Viewed
3. 08/03/09 - Order re Rule 15.9 - Viewed
4. 08/21/09 - Order Amending Rule 15.9 - Viewed and Printed
5. 09/02/09 - Order for Rule 15.9 Appointment - Viewed and Printed
6. 11/16/09 - Order for Rule 15.9 Appointment - Viewed
7. 12/17/09 - Order for Rule 15.9 Appointment - Viewed
8. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
9. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
10. 01/14/10 - Order for Rule 15.9 Appointment - Viewed
11. 03/26/10 - Order Appointing - Viewed
12. 04/21/10 - Order for Rule 15.9 - Viewed

13. 04/28/10 - Order for Rule 15.9 - Viewed
14. 09/22/10 - Order Sealing Document - Viewed

Ex Parte documents viewed and printed:

1. 08/03/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed
2. 08/11/09 - Order Granting Ex Parte (Motion filed ex parte) - Viewed
3. 08/21/09 - Order Amending 15.9 Appointment (filed ex parte) - Viewed and Printed
4. 09/02/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed and Printed
5. 11/16/09 - Order for Rule 15.9 (Motion filed ex parte) - Viewed
6. 12/17/09 - Order Appointing Rule 15.9 (Motion filed ex parte) - Viewed
7. 01/14/10 - Order Appointing Rule 15.9 (filed ex parte) - Viewed
8. 01/14/10 - Order Appointing Rule 15.9 (filed ex parte) - Viewed
9. 03/26/10 - Order Appointing (Motion filed ex parte) - Viewed
10. 04/21/10 - Order for Rule 15.9 (filed ex parte) - Viewed
11. 04/28/10 - Order for Rule 15.9 (filed ex parte) - Viewed

Rhonda Grubb - (Prescott Misdemeanor division)

Sealed documents viewed and printed:

1. 07/12/10 - Objection to state's late disclosure - Viewed and Printed
2. 09/22/10 - Order sealing document - Viewed

Sean Paul - (Charging division)

Sealed documents viewed:

1. 07/12/10 - Objection to state's late disclosure - Viewed

Seretha Hopper - (Prescott division)

Sealed documents viewed and printed:

1. 08/03/09 - Order for Rule 15.9 - Printed
2. 08/19/09 - Order for Rule 15.9 - Printed
3. 08/21/09 - Order for Rule 15.9 - Printed
4. 09/02/09 - Order for Rule 15.9 Appointment - Printed
5. 12/17/09 - Order Appointing Rule 15.9 - Viewed
6. 01/14/10 - Order for Rule 15.9 - Printed
7. 01/14/10 - Order for Rule 15.9 - Printed
8. 01/14/10 - Order for Rule 15.9 - Printed
9. 02/19/10 - Order for Rule 15.9 - Printed
10. 04/21/10 - Order for Rule 15.9 - Printed
11. 08/05/10 - Order sealing document - Viewed

12. 09/16/10 - Court Order/Ruling - Printed
13. 09/22/10 - Order sealing document - Printed

Ex Parte documents viewed and printed:

1. 08/03/09 - Order for Rule 15.9 (filed ex parte) - Viewed
2. 08/11/09 - Order Granting Ex Parte (filed ex parte) - Printed
3. 08/19/09 - Order for Rule 15.9 (application filed ex parte) - Printed
4. 08/21/09 - Amending 15.9 Appointment (application filed ex parte) - Printed
5. 09/02/09 - Order for Rule 15.9 (filed ex parte) - Printed
6. 12/17/09 - Order Appointing Rule 15.9 (filed ex parte) - Viewed
7. 01/14/10 - Order for Rule 15.9 (application filed ex parte) - Printed
8. 01/14/10 - Order for Rule 15.9 (application filed ex parte) - Printed
9. 01/14/10 - Order for Rule 15.9 (application filed ex parte) - Printed
10. 02/19/10 - Order for Rule 15.9 (application filed ex parte) - Printed
11. 04/21/10 - Order for Rule 15.9 (application filed ex parte) - Printed

Tony Camacho - (Victim Services Prescott division)

Sealed documents viewed:

1. 08/03/09 - Order for Rule 15.9 - Viewed
2. 08/21/09 - Order Amending Rule 15.9 - Viewed
3. 09/02/09 - Order for Rule 15.9 Appointment - Viewed
4. 02/19/10 - Order for Rule 15.9 - Viewed
5. 03/10/10 - Motion to Exclude/Preclude evidence - Viewed
6. 04/28/10 - Order for Rule 15.9 - Viewed
7. 05/04/10 - Jury Message - Viewed
8. 05/05/10 - Jury Message - Viewed
9. 05/06/10 - Jury Message - Viewed
10. 05/06/10 - Jury Message - Viewed
11. 05/11/10 - Jury Message - Viewed
12. 08/02/10 - Motion: Protective Order - Viewed
13. 08/20/10 - Under Advisement Ruling - Viewed
14. 08/20/10 - Under Advisement Ruling - Viewed
15. 08/20/10 - Under Advisement Ruling - Viewed
16. 08/20/10 - Under Advisement Ruling - Viewed
17. 08/30/10 - Order Granting - Viewed
18. 09/16/10 - Court Order/Ruling - Viewed

Ex Parte documents viewed:

1. 07/21/09 - Motion for 15.9 (filed ex parte) - Viewed
2. 08/03/09 - Order for Rule 15.9 - Viewed
3. 08/21/09 - Amending 15.9 Appointment (application filed ex parte) - Viewed

4. 09/02/09 - Order for Rule 15.9 (filed ex parte) - Viewed
5. 02/19/10 - Order for Rule 15.9 (application filed ex parte) - Viewed
6. 04/28/10 - Order for Rule 15.9 (filed ex parte) - Viewed

Det. Steven Page - (Yavapai County Sheriffs Office)

Sealed documents viewed:

1. 08/03/09 - Order for Rule 15.9 - Viewed

Det. John McDormont - (Yavapai County Sheriffs Office)

Sealed documents viewed:

1. 07/12/10 - Objection to state's late disclosure - Viewed

NOTE: The Sealed documents were viewed and printed by the Yavapai County Attorney's Office, Yavapai County Victim Services and the Yavapai County Sheriff's Department a total of 104 times.

The Ex Parte documents were viewed and printed by the Yavapai County Attorney's Office, Yavapai County Victim Services a total of 59 times.

4

P1300CR20081339

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
1	10/31/2008	Grand Jury Minutes	✓	✓	11/20/08 & 1/22/09 V	P. Glover V	VS
1	11/04/2008	Transcript of Grand Jury Proceedings	✓	✓	11/20/08 thru 8/24/09 V	P. Glover V B. Paris V C. Landis V J. Jordan V	VS CA CA PD

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Document opened V-viewed P-printed	<i>Viewed and/or Printed By:</i>	Dept.
11	05/04/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	5/7/10 & 10/9/10 V	A.Camacho V J. Fields V	VS CA
11	05/05/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	5/7/10 & 10/9/10 V	A.Camacho V J. Fields V	VS CA
11	05/06/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	5/7/10 thru 10/10/10 V	A.Camacho V J. Fields V	VS CA
11	05/06/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	5/7/10 thru 10/10/10 V	A.Camacho V J. Fields V	VS CA
11	05/11/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	5/12/10 thru 10/9/10 V	A.Camacho V J. Fields V B. Paris V P. Moreton V	VS CA CA CA
12	06/02/2010	Miscellaneous: Miscellaneous (Jury message)	✓	✓	10/9/10 & 10/10/10 V	J. Fields V	CA
12	06/08/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	10/9/10 & 10/10/10 V	J. Fields V	CA
13	06/17/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	10/9/10 & 10/10/10 V	J. Fields V	CA
13	06/30/2010	Miscellaneous: Miscellaneous (Jury message)	✓	✓	7/7/10 & 10/9/10 & J. Fields V	P. Spears V J. Fields V	CA CA

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
					10/10/10 V		
13	07/07/2010	Miscellaneous: Miscellaneous (Jury messages)	✓	✓	10/9/10 & 10/10/10 V	J. Fields V	CA
13	07/08/2010	Miscellaneous: Supplement to (State's motion to extend time)	✓	✓	7/9/10 & 10/10/10 V	PrPub V J. Fields V	PD CA
13	07/12/2010	Motion: Determine Counsel	✓	✓	10/9/10 & 10/10/10 V	J. Fields V	CA
13	07/12/2010	Objection: Objection (to State's late disclosure) (this document was in the public view until retrieved from the division on (12/10/10) a Judge's note was on the document saying to seal document)	✓	✓	7/13/10 Thru 11/1/10 V & P	K. Ahlgren V J. McDormet V J. Fields V M. Higgins V R. Grubb V & P D. Cowell V S. Paul V K. Olsen V P. Kavanaugh V	PD YCSO CA CA CA CA CA CA CA
15	08/02/2010	Motion: Protective Order	✓	✓	8/18/10 V	A. Camacho V	VS

20 - Sealed motions, notices, replies, etc. (viewed and/or printed)

[REDACTED]

STATE OF ARIZONA

v.

STEVEN CARROLL DeMOCKER

P1300CR20081339

EX PARTE SEALED DOCUMENTS

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Ex Parte	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
3	07/21/2009	Motion (for 15.9) Ex Parte filed by defense	✓	✓	✓	8/11/09 V	Anthony Camacho V	VS
3	08/03/2009	Order (for Rule 15.9) Ex Parte Motion filed 7/21/09	✓	✓		8/5/09 thru 10/15/09 V & P	S. Hopper V B. South P A. Camacho V P. Glover V	CA PD VS
3			✓	✓				
3			✓	✓				
3	08/19/2009	Order (Rule 15.9) Ex Parte Application filed 8/18/09	✓	✓		8/20/09 V & P	S. Hopper P J. Jordan V	CA PD
3	08/21/2009	Order Amending (15.9 appointment) Ex Parte Application filed 8/18/09	✓	✓		8/24/09 V & P	S. Hopper P J. Jordan V & P A. Camacho V P. Glover V & P	CA PD VS
3	08/31/2009	Motion (for Rule 15.9) Ex Parte filed by defense	✓	✓	✓	9/14/09 V	Barb Paris V	CA
3	09/02/2009	Order (for Rule 15.9) Ex Parte Motion filed 8/31/09	✓	✓		9/4/09 thru 9/16/09 V & P	S. Hopper P B. Paris V K. Durrer V J. Fields V J. Jordan P Anthony V Camacho V P. Glover V & P	CA VS
4	10/02/2009	Motion (for Rule 15.9) Ex Parte filed by defense	✓	✓	✓	10/8/09 thru 10/20/09 V & P	D. Cowell V & P M. Higgins V J. Fields V K. Ahlgren V	CA CA PD

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Ex Parte	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
4						1/14/10 V	P.Eggers A.Fallick	V V
4	10/28/2009	Notice: Filing Statement Ex Parte filed by defense	✓	✓	✓	1/14/10 V	J. Fields	V CA
4								
4	11/12/2009	Application: Revised Application- Revised-Rule 15.9 Appointment Ex Parte filed by defense *Unable to locate Order	✓	✓	✓	11/16/09 thru 1/14/10 V	M.Higgins D.Cowell J.Fields K.Ahlgren	V V V V PD
4	11/16/2009	Order: Order (15.9) Ex Parte motion filed 11/09/09	✓	✓		11/17/09 V & P	J.Jordan P.Glover	P V V VS
5								
5	12/11/2009	Motion: Motion (for Rule 15.9) Ex Parte filed by defense	✓	✓	✓	12/15/09 V & P 1/14/10 V	D.Cowell J.Fields	V & P V CA
5	12/17/2009	Motion: Reconsideration (15.9) Ex Parte filed by defense	✓	✓	✓	1/14/10 V	J.Fields	V CA
5	12/17/2009	Order: Appointing (Rule 15.9) Ex Parte Motion filed 12/11/09	✓	✓		12/18/09 V	S.Hopper P.Glover	V CA V VS
6								
6	01/11/2010	Motion: Motion Ex Parte filed by defense	✓	✓	✓	1/14/10 & 1/18/10 V	J.Fields	V CA
6	01/11/2010	Motion: Motion (Rule 15.9) Ex Parte filed by defense	✓	✓	✓	1/14/10 & 1/18/10 V	J.Fields	V CA
6	01/14/2010	Order: Appointing (Rule 15.9) Ex Parte Application filed 1/11/10	✓	✓		1/14/10 & 1/15/10 V & P	B.Paris S.Hopper J.Jordan	V P PD CA

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Ex Parte	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
6	01/14/2010	Order: Appointing (Rule 15.9) Ex Parte Motion filed 1/11/10	✓	✓		1/14/10 & 1/15/10 V & P	P. Glover V Barb Paris V S. Hopper P J. Jordan P P. Glover V	VS CA PD VS
6	01/14/2010	Order: Appointing (Rule 15.9) Ex Parte Motion filed 1/11/10	✓	✓		1/14/10 & 1/15/10 V & P	Barb Paris V S. Hopper P J. Jordan P P. Glover V	CA CA PD VS
7								
8	02/19/2010	Order: Order (Rule 15.9) Ex Parte Application filed 2/11/10	✓	✓		2/22/10 V & P	S. Hopper P P. Spear P A. Camacho V	CA CA VS
9								
9	03/26/2010	Order: Appointing Ex Parte Motion filed 3/15/10	✓	✓		3/29/10 V & P	B. Genego P B. Paris V P. Glover V	CA VS VS
10								
11	04/21/2010	Order: Order (for Rule 15.9) Ex Parte Motion filed 4/13/10S	✓	✓		4/22/10 V & P	S. Hopper P P. Glover V	CA VS
11								
11	04/28/2010	Order: Order (for Rule 15.9) Ex Parte Motion filed 4/23/10	✓	✓		4/30/10 thru 10/10/10 V & P	A. Camacho V P. Glover V B. Genego P B. Paris V J. Fields V	VS VS CA
11								
13	06/23/2010	Reply: Reply (to supplemental request re sanctions) Ex Parte filed by defense	✓	✓	✓	7/7/10, 10/9/10 & 10/10/10 V	P. Spears V J. Fields V	CA

